

Exhibit A

COMMONWEALTH OF MASSACHUSETTS

WORCESTER SS.

SUPREME JUDICIAL COURT

No. SJC-----

Steven M. Putnam, Petitioner

-v-

Nelson B. Alves, Superintendent, Respondent

PETITION FOR A WRIT OF HABEAS CORPUS

The petitioner, appearing Pro Se, petitions this Honorable Court for his immediate release from prison based on the misconduct of the Commonwealth, which committed fraud on the Court by withholding evidence after the Supreme Judicial Court ruled in his favor in a G.L. c. 278A claim. Commonwealth v. Putnam, 481 Mass. 1045 (2019) [Appendix One, pp. 1-4]

G.L. c. 248 §1:

"Whoever is imprisoned or restrained of his liberty may, as of right and of course, prosecute a writ of habeas corpus, according to this chapter, to obtain release from such imprisonment or restraint if it proves to be unlawful, ... "

See, [Appendix Two, p. 1]

The writ may issue as a matter of discretion under G.L. c. 248 §25. [Appendix Two, p. 6]

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See, Petition of Needel, 344 Mass. 200 (1962);
Petition of Stewart, 381 Mass. 777 (1980)

The writ may issue upon the "exhaustion of
State remedies." Binkiewicz v. Scafati, 281 F. Supp.
233 (D. Mass. 1968)

The petitioner's claims do not relate to the
indictment, trial, conviction, and sentencing stages
of the case. Bates v. Commonwealth, 431 Mass. 1019,
1020 (2001)

To obtain the relief provided in Putnam, ante,
the petitioner had filed an Affidavit In Support Of
Motion for Post-Conviction Access To Forensic and
Scientific Analysis. [Appendix Three] The Supreme
Judicial Court relief upon this evidence in order to
reverse [Appendix One, p. 4] the Superior Court's denial
of having the Commonwealth test certain evidence.

The evidence was based on the prosecutorial
misconduct of claiming there was blood on the tunic
of the complaining witness. [Appendix Four, pp. 2-3]

The prosecutor, in his closing argument stated:

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"But certainly they were in this condition when she picked them up, secured as evidence, and taken over to the lab and then evaluated by the chemist."

[Appendix Four, p. 4]

In 2016, the lab sent its forensic report to the prosecutor, Paula Frasso. The tunic, which the lab calls a "sweater," in Lab Case No. 04-00766, was not only tested, but was returned to the District Attorney's Office. [Appendix Five, p. 7]

This case is not about the conviction. The petitioner has already served the time for the alleged rape. This is about the Brady v. Maryland, 373 U.S. 83, 87 (1963); United States v. Agurs, 427 U.S. 97, 110 (1976) violations committed by the prosecutor, pre-trial.

This was a Structural Defect in the criminal process. Arizona v. Fulminante, 499 U.S. 279, 310-311 (1991)(this violation is not subject to "harmless error" review)

As background, the petitioner wants the Court to ruminate on his previously submitted Affidavit In

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Support Of Motion For New Trial, submitted on February 28, 2014, his sworn version of the facts. [Appendix Seven, p. 8]

The Commonwealth, in its Opposition to Defendant's Motion For Post-Conviction Forensic Analysis, claimed

"[T]he defendant has failed to establish by a preponderance of the evidence a sufficient chain of custody for the slacks and the tunic. The victim was wearing gray slacks and a tunic when she was assaulted by the defendant. These items were sent to the Massachusetts State Crime Lab on January 27, 2004, and were returned to the Harvard Police Department on February 18, 2005. Commonwealth's Exhibit C. The gray slacks were entered into evidence at trial as Exhibit 9 and the tunic (sweater) was entered into evidence as Exhibit 6. These items are currently stored in the Worcester Superior Court Clerk's Office."

[Appendix Eight, p. 9] (Note: the Commonwealth's numbering system appears snarled)

Defense counsel filed for Discovery (Mass.R.Crim. P. 14(a)(2), et. seq.,) on August 24, 2004. Any location or testing of the sweater which allegedly had blood on it was not revealed to the defendant. [Appendix 7, p. 4]

These facts, developed by the petitioner in the

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Supreme Judicial Court, show that an evidentiary hearing should not be barred. 28 USC §2254(e)(2)

"...the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error no reasonable factfinder would have found the applicant guilty of the underlying offense."

Keeney v. Tamayo-Reyes, 504 U.S. 1, 11-12 (1992); Pike v. Guarino, 492 F.3d 61, 69 (1st Cir. 2007) (the petitioner is entitled to an evidentiary hearing because he presented extensive evidence in the State Court)

Because the Commonwealth never provided the requested discovery, it can be considered to be "new and substantial" evidence for evidentiary hearing purposes. 28 U.S.C. §2254(e)(2)(A)(ii); Lopez v. Massachusetts, 480 F.3d 591, 594 (1st Cir. 2006) (Brady violation claim reviewed under deferential §2254(d) standard here, calls for the Writ to be issued)

Prosecutor Misconduct

The prosecutor's duty in a criminal prosecution is to seek justice. Berger v. United States, 295 U.S. 78, 88 (1935)

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The prosecutor should prosecute with "earnestness and vigor," but may not use "improper methods calculated to produce a wrongful conviction." The petitioner has proven by clear and convincing evidence his due process rights were violated when the prosecutor failed to notify, produce, results of testing, discovery of the tunic not having any blood on it in August 2004, said testing the purpose for sending the clothing to the State Police Crime Laboratory in the first place.

"And Susan showed you the sweater that she had on that night. It was a gray sweater. And there were spots up on the shoulders. And she said to you that she thought that was blood on the sweater from him." [Appendix Four, p. 5](Closing Argument)

This evidence traveled through 8 lab technicians from January 27, 2004 through January 6, 2005. [Appendix Five, p. 7]

The prosecutor, one Paula Frasso, may not knowingly present false testimony and had the duty to correct any testimony that she knew to be false, Napue v. Illinois, 360 U.S. 264, 269 (1959): Mooney v. Holohan, 294 U.S. 103, 112 (1935)

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The Commonwealth attorneys' misconduct drifted into the pleadings of Assistant District Attorney Donna-Marie Haran:

On April 21, 2021, the petitioner submitted Defendant's Motion For The Court To Compel The Commonwealth To Conduct Forensic Testing (based on the ruling in Commonwealth v. Putnam, 481 Mass. 1045 (2019)) [See, Appendix One, pp. 1-4], The petitioner presented State and United States caselaw for support. [Additive 4, pp. 2-21]

Rather than respond with relevant evidence, both facts and law, the ADA pulled a "fast one."

"Wherefor, the Commonwealth does hereby move that it be permitted to respond to the defendant's motion to compel the Commonwealth to conduct forensic testing after counsel has been appointed, and has filed an amended or supplemental motion or declined to do so."

[Additive 5, p. 4]

Even ADA Haran committed fraud on the Court, Mushani v. Signal Lake Venture Fund II, LLP., 60

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Mass. App. Ct. 714, 718-719 (2004): In re Gross,
435 Mass. 445, 457 (2001); United States v.
Throckmorton, 98 U.S. 61, 64 (1878)(Fraud on the
Court vitiates judgments)

In February 2020 the petitioner wrote to CPCS
and asked for another attorney, based on his 278A
attorney pedaling backwards from the Supreme Court's
decision in Commonwealth v. Putnam, 481 Mass. 1045 (2019)
which appears to be just "unfair." [Appendix Nine]

However, ADA Haran was fully apprised that CPCS
would not appoint an attorney for the G.L. c. 278A claim.
[Appendix ten]

On June 3, 2021, the petitioner filed a Defendant's
Rebuttal To The Commonwealth's Motion of May 26, 2021,
claiming that (another) delay is prejudicial to him.
[Additive 7, p. 2] The Worcester Superior Court,
Reardon, J., has done nothing. [Appendix Seven, p. 19]

Now, the Commonwealth appears to be "vindictive."
Blackledge v. Perry, 417 U.S. 21, 28-29 (1974) See,
Shih Wei Su v. Fillion, 335 F.3d 119, 127-130 (2d Cir.

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2003)(prosecutor's failure to correct government witness's false testimony and the governments' subsequent attempts to "stonewall the facts," is improper and violates the Due Process Clause of the 14th Amendment and Article XII of the Massachusetts Declaration Of Rights)

Apparently the Commonwealth does not have the tunic with the so-called "blood spots," tested it, and failed to provide this exculpatory evidence, and now seeks to avoid the comeuppance by the Supreme Judicial Court, based on the Commonwealth's fraudulent and deliberate violations of the Constitution(s).

The Federal Standards

A "federal court may grant habeas relief only when a state court's decision on the merits was 'contrary to, or involved an unreasonable application of clearly established Federal law, as determined by' decisions from th[e] [Supreme Court of the United States], or was 'based on an unreasonable determination of the facts.'" Woods v. Donald, 575 U.S. 312, 315 (2015)[quoting] 28 USC §2254(d).

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In this context, clearly established law refers to the "governing legal principle or principles set forth by the Supreme Court at the time the state court renders its decision" and must be "holdings, as opposed to dicta." Lockyer v. Andrade, 538 U.S. 63, 71-72 (2003)

A State Court's decision is "contrary to" clearly established federal law as determined by the Supreme Court if it "applies a legal rule that contradicts" the "prior holdings" of the Supreme Court" or if it reaches a different result from "a Supreme Court case" "despite confronting indistinguishable facts." Ramdass v. Angelone, 530 U.S. 156, 165 (2000) The petitioner has shown here he is "in custody in violation of the Constitution or laws or treaties of the United States." Aspen v. Bissonnette, 480 F.3d 571, 576 (1st Cir. 2007)

Here the Court may not apply [the rules] unreasonably to the facts of this case. White v. Woodall, 572 U.S. 415, 426 (2014)

The connection from State law, G.L. c. 248 §§ 1-25, delineated by the Massachusetts Legislature, are sacrosanct.

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"[W]hoever is imprisoned or restrained of his liberty may, as of right and of course, prosecute a writ of habeas corpus, according to this chapter, to obtain release from such imprisonment or restraint, if it proves to be unlawful, unless...."

According to "First," "Second," or "Third," the petitioner may not be released through this process if he is challenging his conviction, which he is not. He is challenging "prosecutorial misconduct," in a collateral proceeding, the remedy for which is to "obtain release."

"[T]here is a presumption that the Legislature says in a statute what it means and means in a statute what it says."

Connecticut National Bank v. German, 503 U.S.

249 (1992)

The Supreme Judicial Court has ruled "...the language of the statute is the starting point for all questions of statutory interpretation." Hoffman v. Howmedia Inc., 373 Mass. 32, 37 (1977)

G.L. c. 248 §§1-25 is presumed to be constitutional and every rational presumption is favor of the statute's validity is made. Pielech v. Massasoit Greyhound, Inc., 441 Mass. 188, 193 (2004)

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In addition, G.L. c. 248 §1 and G.L. c. 248 §25 are two statutes which are capable of coexistence and the Supreme Judicial Court has the duty to regard each as effective. Radzanower v. Touche Ross Co., 426 U.S. 148, 155 (1976)

According to both State and Federal law, under the Due Process Clause(s) of the 14th Amendment and Article XII of the Massachusetts Declaration Of Rights, Matthews v. Eldridge, 424 U.S. 319, 335 (1976); Aime v. Commonwealth, 414 Mass. 667, 674 (1993) the statute must be implemented in a fair manner.

Under Federal law, "the prosecution" of an Opposition to seeking justice by the petitioner of an Napue v. Illinois, ante, violation on the collateral front, is just as egregious as would be a "trial error."

This is not that. This is a Structural Defect, post-trial, which relates back to the trial. This improper advocacy by the District Attorney's office must be punished for its lack of disclosure, where it appears the prosecutor does not have the evidence in question and is "fronting" to cover that up.

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Banks v. Dretke, 540 U.S. 668, 691 (2004); Strickler v. Greene, 527 U.S. 263, 281-282 (1999) [citing] Brady, ante, for prosecutorial misconduct in providing exculpatory evidence.

Under §2254(e)(2) the petitioner has "developed the facts" by clear and convincing evidence in the State proceedings. An evidentiary hearing is proper in the Federal District Court. The Supreme Judicial Court may circumvent Federal oversight by remanding the case to the Superior Court for an evidentiary hearing, where the prosecutor, Paula Frasso, the collateral review attorney, Donna-Marie Haran, the State Police Laboratory technicians who worked on the case, the current State Police Laboratory technicians, and the petitioner may testify under oath to settle any disputes in the facts. Williams v. Taylor, 529 U.S. 420, 437 (2000) (The State's "due diligence" requires an evidentiary hearing in the manner prescribed by State law); Pike, ante, 492 F.3d at 69.

Conclusion

For the reasons stated above, in fact and law, the Court must order the immediate release of the Petitioner, who has the Constitutional right to prove his

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innocence under the burden of proof less than beyond a reasonable doubt. Schlup v. Delo, 513 U.S. 298, 327 (1995); Gonzalez v. Abbott, 967 F.2d 1499, 1504 (11th Cir. (1992)

October 14, 2021

Respectfully submitted,



Steven M. Putnam, Pro Se
Box 43,
Norfolk, MA 02056

Certificate of Service:

I hereby certify that I mailed a true copy of the above Petition For Habeas Corpus to Donna-Marie Haran, ADA, 225 Main Street, Worcester, MA 01608 by first class mail on October 14, 2021.

Exhibit B

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NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCRReporter@sjc.state.ma.us

SJC-12596

COMMONWEALTH vs. STEVEN M. PUTNAM.

481 Mass. 1045 (2019)

April 9, 2019.

Evidence, Scientific test, Relevancy and materiality. Practice, Criminal, Postconviction relief.

In March 2006, after a jury trial, the defendant was found guilty of home invasion, armed assault in a dwelling, rape, and assault and battery; he was sentenced to from twenty to twenty-five years in State prison. The defendant here appeals from the denial of a motion filed pursuant to G. L. c. 278A (chapter 278A) seeking postconviction forensic and scientific testing of evidence and biological material to support a motion for a new trial. We decide this appeal on the basis of our opinion today in Commonwealth v. Williams, 481 Mass. (2019).¹

Facts and prior proceedings. The evidence presented at the defendant's trial is summarized in Commonwealth v. Putnam, 75 Mass. App. Ct. 472, 473-476 (2009), the affirmance of the defendant's convictions on direct appeal. We provide a condensed version of events as the jury could have found them.

On the evening of January 26, 2004, the defendant, with whom the victim was acquainted, knocked at the victim's door, seeking to speak with her. After initially turning the defendant away, the victim allowed the defendant to enter her home, and the two spoke for a short period of time. When the victim attempted to make a telephone call, the defendant grabbed the victim, punched her in the face, and threw the telephone to

¹ We acknowledge the amicus brief submitted by the New England Innocence Project, the Boston College Innocence Program, the Committee for Public Counsel Services, and Dennis Maher.

the floor. After beating the victim, the defendant pulled a knife out of his pocket and stated, "You can make this hard or you can make this easy."

The defendant tore off some of the victim's clothing and digitally raped her. When the defendant paused to pull his shirt off, the victim fled. Naked from the waist down, the victim ran to a neighbor's house; the neighbor called the police, who arrived at the scene within minutes.

At trial, the defendant testified in his own defense that the physical contact between him and the victim was consensual and did not include penetration. As for the knife, the defendant testified that he had tried to give it to the victim because he was afraid that he would hurt himself.

The defendant filed the instant chapter 278A motion pro se in July 2016, and he supplemented it once he was appointed counsel. In his motion, the defendant asserted his factual innocence, claiming that he did not enter the victim's home with the intent to commit a crime (and thus was not guilty of home invasion); that he neither used force on nor caused injury to the victim (and thus was not guilty of either armed assault or assault and battery); and that he did not penetrate the victim (and thus was not guilty of rape). Among other things, the defendant further asserted, pursuant to G. L. c. 278A, § 3 (b) (4), that the requested forensic testing of clothing collected from the victim, and the testing of the sexual assault evidence collection kit, had the potential to result in evidence material to the defendant's identification as the perpetrator.

The Commonwealth opposed the defendant's motion, arguing principally that the defendant's claim that no crime occurred was categorically barred from chapter 278A relief because it did not put identity at issue. In denying the defendant's motion, the judge stated in part:

"The defendant's motion and affidavits do not meet the requirements of [G. L. c. 278A, § 3 (b) (4),] in that the defendant has not met his burden to show whether any test results could be material to the question of identity of the perpetrator. Here the issue is not identity, but whether a crime occurred. Defendant is not entitled to relief."

The defendant appealed, and we granted his application for direct appellate review.²

Discussion. The defendant argues that the motion judge erred by interpreting G. L. c. 278A, § 3 (b) (4), to exclude movants who claim that no crime occurred. In Williams, 481 Mass. at , we concluded that "a defendant who asserts that the requested testing has the potential to result in evidence that is material to his or her identity as the perpetrator of the crime because no crime in fact occurred satisfies the § 3 (b) (4) requirement." Thus, here we conclude that the defendant's motion satisfies the threshold burden of § 3 (b) (4).³

Nothing in our decision should be read as a comment on the defendant's likelihood of success in obtaining the testing he seeks. We note that at the hearing stage, he still must demonstrate by a preponderance of the evidence each of the factors enumerated in G. L. c. 278A, § 7 (b), including that "the requested analysis has the potential to result in evidence that is material to the moving party's identification as the perpetrator of the crime in the underlying case." G. L.

² Pursuant to G. L. c. 278A (chapter 278A), an individual seeking postconviction forensic testing must present certain information by way of motion. The Commonwealth may provide a response, but need not do so at the motion stage, which is considered "nonadversarial." G. L. c. 278A, § 3 (e). See Commonwealth v. Wade, 467 Mass. 496, 503 (2014), S.C., 475 Mass. 54 (2016). If the motion is allowed, the Commonwealth at that point must file a response, and the court will hold an evidentiary hearing. G. L. c. 278A, §§ 4 (c), 6. Here, there is no indication in the docket that the defendant's chapter 278A motion was allowed before the Commonwealth was ordered to respond. The Commonwealth did so citing G. L. c. 278A, § 4, the provision requiring the Commonwealth's response once the initial motion has been allowed. A G. L. c. 278A, § 6, hearing was scheduled, but the hearing that took place was focused on whether the defendant was eligible to seek chapter 278A testing and was nonevidentiary in nature. For these reasons, and because the motion judge who issued the ultimate denial cited G. L. c. 278A, § 3 (b) (4), we review the matter at the motion stage under § 3.

³ The Commonwealth does not identify, nor do we discern, any defect in the defendant's prima facie case for chapter 278A relief under the other § 3 factors.

c. 278A, § 7 (b) (4). More specifically, here the defendant will need to demonstrate that the analysis has the potential to result in evidence that is material to proving that no crime occurred.

Conclusion. The order denying the defendant's chapter 278A motion is reversed, and this case is remanded to the Superior Court for further proceedings consistent with this opinion and our reasoning in Williams, supra.

So ordered.

Merritt Schnipper for the defendant.

Donna-Marie Haran, Assistant District Attorney, for the Commonwealth.

Lisa M. Kavanaugh, Committee for Public Counsel Services, Stephanie Roberts Hartung, Isaac N. Saidel-Goley, Sarah L. Rosenbluth, Sara J. van Vliet, & Sharon L. Beckman, for New England Innocence Project & others, amici curiae, submitted a brief.

Exhibit C

COMMONWEALTH OF MASSACHUSETTS

WORCESTER SS.

SUPERIOR COURT

WOCR2004-00666

Commonwealth v. Putnam,

AFFIDAVIT IN SUPPORT OF MOTION FOR NEW TRIAL

I, Steven M. Putnam, do hereby depose and state the following to be true:

1. On January 26, 2004 I was invited into the home of the Complaining Witness (name withheld).
2. At the time of the visit I sought psychiatric help from the CW as I had been drinking heavily and was having thoughts of committing suicide.
3. CW asked me to take a seat at the kitchen table.
4. CW was drinking wine and appeared to be tipsy.
5. CW asked me if I wanted to kill myself and I said I had thought about it - but no I didn't.
6. I elaborated that I felt like it sometimes. I took my 3½" pocket knife out of my back pocket and handed it to CW but she refused to take it.
7. CW was asking me what I wanted out of life.
8. When I stated I was looking for love, CW told me that it wasn't working for me.
9. CW then allowed me to hug her but then she pushed me away saying she's not interested in me.

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10. I could tell CW was a little tipsy so I kissed her on the lips.
11. CW kissed me back but when I said "let's go upstairs" she said "Let's sit on the couch."
12. We sat on the couch and I was hugging her and I helped her take off her sweatpants and panties.
13. I assumed that we were going to make love but because of the alcohol I was impotent.
14. While we were talking she again asked me if I felt suicidal.
15. All of a sudden CW ran out of the house with just her shirt and socks on.
16. I became really scared so I left CW's house and went back to my place.
17. I was under the care of Dr. Szetela at Emerson Hospital and the Harvard Police Detective called me and directed me to go to the doctor.
18. I had gone to CW's house because I needed help with my drinking habit and my suicidal thoughts.
19. I had had a drinking problem for years - I would quit - but come back to it - my life was worthless - I thought I should take my own life.
20. The night I went to CW's home I had just been fired from my Caretaker's job next door to CW's house.
21. When I went to CW's home I had a 3½" pocket knife in my back pocket of my pants.
22. At trial I told the jury that the knife they had at trial was not my knife.
23. I told the jury/prosecutor that I went to CW's home for help.

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24. Up to the point where CW ran out of the door, all her actions were consensual.
25. When CW told me to stop getting ready to make love I stopped.
26. I was being treated by doctors throughout the years for mental impairment, including alcohol addiction, depression and suicidal ideations.
27. From April 16, 2004 until November 2005, I was represented by Robert A. Delle of 74 Elm Street in Worcester; who had filed a motion to withdraw on October 7, 2004.
28. After November 16, 2005 I was represented by Sean McGinty of 484 Main Street in Worcester.
29. I was not present for, nor was I notified of any PreTrial Conference held in the Worcester Superior Court for the case I was there for.
30. My attorney, Sean McGinty, told me that because I was a first offender the guidelines on sentencing allowed for an 8-12 year sentence. I told Mr. McGinty that because I was innocent, I would not plead out.
31. Prior to February 27, 2006 I had not been convicted of a felony crime.
32. In reading the Docket Entry sheets there were eleven (11) pre-trial conferences held which did not include me.
33. At my sentencing hearing on March 3, 2006, the CW gave statements to the Court contrary to her original statement to the police, her trial testimony, and the evidence presented at trial by the Commonwealth.
34. The CW witness told the Court I have a long history of detoxifications and she suspected me of psychological difficulties which were not successfully treated.
35. CW requested from the Court the maximum penalty allowed by law.

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1 ~~blood. And Susan showed you the sweater that she had~~
2 on that night. It was a gray sweater. And there were
3 spots up on the shoulders. And she said to you that
4 ✓ she thought that was blood on the sweater from him.

5 And then Susan left the house in terror.
6 She left and she went to her neighbors, who you heard
7 testify, Anne Marie and Hank Emerson, and they told
8 the nature of her mind, the state of her mind, the
9 terror that she was experiencing, that she was
10 hysterical, that she couldn't -- she was breathing
11 heavy. She couldn't articulate. And then the
12 officers verified that.

13 And then she told you that Steven Putnam
14 grabbed her in the kitchen and that he assaulted her.
15 He punched her in the head. He pulled her hair. He
16 bit her.

17 And how do we know that happened? Well,
18 first, we have the medical records. And in the
19 medical records, you have the nurse's notes of what
20 she saw.

21 And she says that she saw abrasions and
22 contusions. And to you and me, those are scrapes and
23 bruises. That's what she saw. That's what the
24 officers testified that they saw, abrasions on her

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~~Now, the evidence that you've seen just~~
doesn't support that. First of all, here are the pants that were recovered from the scene.

Now, Trooper Fisher told you she went into the home and she took photographs and she saw clothing on the floor, which she couldn't really describe to you. She just generally remembered colors of clothing.

✓ And she collected those items and put them into evidence bags. She didn't analyze them. She didn't do anything else with them. She just held them and transferred them.

And I would suggest that when she picked these up from the floor, she may not have seen they were ripped. But certainly they were in this condition when she picked them up, secured as evidence, and taken over to the lab and then evaluated by the chemist.

✓ She told you that she looked at these pants and she determined how the tearing was -- how it happened, that it wasn't the way it would happen when you sit down and your pants tear. It was a violent ripping.

And then recall she said that there was

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1 MS. FRASSO: - Thank you,--your Honor.

2 THE COURT: Hold on.

3 Q. What is that?

4 A. That's --

5 THE COURT: Hold on one second.

6 (Photograph, marked for
7 identification as
8 Exhibit B.)

9 MS. FRASSO: Excuse me.

10 (Ms. Frasso and the court reporter confer.)

11 THE COURT: You asked it be marked --

12 MS. FRASSO: Did I ask for identification?

13 THE COURT: -- for identification.

14 MS. FRASSO: Could it be marked as an
15 exhibit?

16 THE COURT: Any objection?

17 MR. MCGINTY: No, your Honor.

18 THE COURT: Next exhibit.

19 (Photograph previously
20 marked as Exhibit B,
21 marked and admitted into
22 evidence as Exhibit 5.)

23 Q. (by Ms. Frasso) What is that before you?

24 A. A tunic.

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1 Q. Do you recognize that?

2 A. Yes.

3 Q. When was the last time you saw that?

4 A. The night I was assaulted.

5 Q. And do you notice anything on the ~~upper left-hand side~~
6 there? ~~Maybe the right-hand side.~~

7 A. There's a little blood there and there's blood on the
8 right-hand side.

9 Q. Were you bleeding that night?

10 A. Not to my knowledge, right then.

11 Q. And is that the area where the defendant grabbed you?

12 A. Yes.

13 MS. FRASSO: Your Honor, I'd request to have
14 this marked as an exhibit.

15 THE COURT: Being no objection --

16 MR. MCGINTY: That's fine, your Honor.

17 THE COURT: -- it may be marked. Did that
18 come in a bag by itself?

19 MS. FRASSO: Yes, it did.

20 THE COURT: Let's put it back in the bag and
21 mark the bag.

22 (White paper bag
23 containing sweater,
24 marked and admitted into

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1 Q. So what happened then?

2 A. He kept trying to push me up the stairs and I didn't
3 go, and he -- there's a couch right there and he threw
4 me down on the couch. And then he ripped off my
5 clothing.

6 Q. Okay. So when he threw you down on the couch -- if
7 you could just hold on just for a minute.

8 I show you a photograph. Is that a fair and
9 accurate representation of what it appears to be?

10 A. Yes.

11 Q. What is it?

12 A. It's the couch by the stairs in my living room.

13 Q. And is that the couch?

14 A. Yes.

15 Q. What happened then? After he threw you on the couch,
16 what happened next?

17 A. Then he ripped off my clothing on the bottom of my
18 body.

19 Q. What were you wearing?

20 A. I was wearing slacks and a tunic and underwear and
21 slippers and socks.

22 MS. FRASSO: Your Honor, could this be
23 marked for identification?

24 THE COURT: Yes.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER SS.

SUPERIOR COURT

0485cr00666

Commonwealth v. Putnam,

AFFIDAVIT IN SUPPORT OF MOTION FOR POST-CONVICTION
ACCESS TO FORENSIC AND SCIENTIFIC ANALYSIS

I, Steven M. Putnam, do hereby depose and state the following to be true:

1. I am the defendant in the above-captioned criminal matter and make this affidavit to support my motion for post-conviction access to forensic and scientific analysis.
2. When I appeared for arraignment I was asked how I pleaded to the charges, which I told the Court "Not Guilty."
3. The reason I pleaded not guilty is because I am factually innocent of committing any crime against the complaining witness.
4. The evidence used to convict me, other than the complaining witness's testimony that the sexual events between us were not consensual is delineated in the Appendices 1-15, which for the most part went untested by the Commonwealth, and my attorney also passed on the testing.
5. I have been trying to prove my innocence for more than a decade, to no avail, but I believe that forensic and scientific analysis will exonerate me.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS TWENTY-SECOND DAY OF JULY, TWO THOUSAND AND SIXTEEN,

/s/



Steven M. Putnam, Pro Se
Box 43, Norfolk, MA 02056

Exhibit E

1



CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

DANIEL BENNETT
SECRETARY

COLONEL RICHARD D. MCKEON
SUPERINTENDENT

The Commonwealth of Massachusetts
Department of State Police
Crime Laboratory

124 Acton Street

Weymouth, MA 01754

Telephone: (978) 451-3300 Facsimile: (978) 451-3320

Chain of Custody Report

Lab Case Number 04-00766
Location: Harvard
Department Name: Harvard Police Department
Dept. Case Number 79912

1-1

BOX1: Knife - -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 13:17	LIMS User	Christine M. Fisher
01/27/2004 13:38	CSSS - Devens (304)	CSSS Lab Area
03/18/2004 9:02	Evidence Transfer	To Crime Laboratory - Sudbury
03/18/2004 14:09	Sudbury Evidence Control Unit	C3-B
12/23/2004 19:30	Cold Storage "B"	CSB A9
12/23/2004 19:30	Cold Storage "B"	CSB A9
11/15/2005 11:42	LIMS User	Sherri J. Menendez
11/15/2005 12:13	North Sudbury Facility	Criminalistics Incoming Cold Room
11/16/2005 8:47	Criminalistics Section	CRIM - Deanna R. Dygan's Work Area
11/16/2005 13:57	Done Area - North Sudbury	Criminalistics Done Area
11/17/2005 17:57	Sudbury Evidence Control Unit	C1-C
11/21/2005 11:12	Evidence Disposition	Returned to Submitting Agency
11/21/2005 15:22	CSSS - Devens (304)	Christine Fisher's Work Area
11/28/2005 14:11	CSSS - Devens (304)	304-Evidence Room Done
02/24/2006 9:09	LIMS User	Christine M. Fisher
03/01/2006 10:28	Evidence Disposition	Returned to Submitting Agency
Submitted as evidence at court testimony to ADA Paula Frasso, Worcester Superior Court		

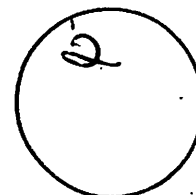
1-1.1

HSP: Knife - Swab (1) from handle for "handler" DNA, Qlim -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
11/16/2005 10:33	LIMS User	Deanna R. Dygan
11/16/2005 10:34	LIMS User	Deanna R. Dygan
11/16/2005 13:57	Done Area - North Sudbury	Criminalistics Done Area
11/18/2005 16:14	LIMS User	Taylor C. Kopec
11/18/2005 17:41	Cold Storage "B"	Long Term Storage
03/10/2009 9:45	Cold Storage "B"	Long Term Storage - Cuttings
12/20/2012 8:30	Cold Storage "B"	2004 Cuttings - Long Term Storage

Comm. Exhibit C

Appendix Five



1-1.2 HSP: Knife-Swab (1) from blade for "handler" DNA, Qlim -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
11/16/2005 10:33	LIMS User	Deanna R. Dygan
11/16/2005 10:34	LIMS User	Deanna R. Dygan
11/16/2005 13:57	Done Area - North Sudbury	Criminalistics Done Area
11/18/2005 16:14	LIMS User	Taylor C. Kopec
11/18/2005 17:41	Cold Storage "B"	Long Term Storage
03/10/2009 9:45	Cold Storage "B"	Long Term Storage - Cuttings
12/20/2012 8:30	Cold Storage "B"	2004 Cuttings - Long Term Storage

1-2 PENV: Latent Lifter - - -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 13:18	LIMS User	Christine M. Fisher
01/27/2004 13:36	CSSS - Devens (304)	CSSS Case File Envelope
11/28/2005 14:13	CSSS - Devens (304)	304-Evidence Room Done
01/16/2008 10:35	Evidence Disposition	Returned to Submitting Agency

1-3 PENV: Latent Lifter - - palm -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 13:18	LIMS User	Christine M. Fisher
01/27/2004 13:36	CSSS - Devens (304)	CSSS Case File Envelope
11/28/2005 14:13	CSSS - Devens (304)	304-Evidence Room Done
01/16/2008 10:35	Evidence Disposition	Returned to Submitting Agency

1-4 PENV: Compact Disk - - master copy -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 13:19	LIMS User	Christine M. Fisher
01/27/2004 13:36	CSSS - Devens (304)	CSSS Case File Envelope

1-5 PENV: Compact Disk - - working copy -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 13:20	LIMS User	Christine M. Fisher
01/27/2004 13:36	CSSS - Devens (304)	CSSS Case File Envelope

1-5.1 ITMTAG: Photo Contact / Index Sheet - - -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 13:20	LIMS User	Christine M. Fisher
01/27/2004 13:36	CSSS - Devens (304)	CSSS Case File Envelope

1-5.2 PENV: Compact Disk - - ADA Frasso copy -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
02/24/2006 9:06	LIMS User	Christine M. Fisher
02/24/2006 9:08	Evidence Disposition	Returned to Submitting Agency

ADA Paula Frasso

1-5.3 PENV: Photo Contact / Index Sheet -- ADA Frasso copy -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
02/24/2006 9:07	LIMS User	Christine M. Fisher
02/24/2006 9:08	Evidence Disposition	Returned to Submitting Agency
ADA Paula Frasso		

1-6 PENV: Photo Negative(s) -- FP photos -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 13:25	LIMS User	Christine M. Fisher
01/27/2004 13:36	CSSS - Devens (304)	CSSS Case File Envelope

1-7 PENV: Compact Disk -- Harvard PD copy -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/30/2004 10:04	CSSS - Devens (304)	CSSS Case File Envelope
01/30/2004 10:07	LIMS User	Christine M. Fisher
01/30/2004 10:31	Evidence Disposition	Released to Authorized Requestee

1-7.1 ITMTAG: Photo Contact / Index Sheet -- Harvard PD copy -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/30/2004 10:04	LIMS User	Christine M. Fisher
01/30/2004 10:31	Evidence Disposition	Released to Authorized Requestee

1-8 PENV: Photo Negative(s) -- FP @ victim's home -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
02/04/2004 14:19	LIMS User	Christine M. Fisher
02/04/2004 14:25	CSSS - Devens (304)	CSSS Case File Envelope

1-8.1 PENV: Compact Disk -- FP @ victim's home -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
02/04/2004 14:20	LIMS User	Christine M. Fisher
02/04/2004 14:25	CSSS - Devens (304)	CSSS Case File Envelope

1-8.2 ITMTAG: Photo Contact / Index Sheet -- FP @ victim's home -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
02/04/2004 14:21	LIMS User	Christine M. Fisher
02/04/2004 14:25	CSSS - Devens (304)	CSSS Case File Envelope

2-1 - KIT: Sexual Assault Evidence Collection Kit - -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 14:09	LIMS User	Christian V. Roy
01/27/2004 14:11	Sudbury Evidence Control Unit	Serology Shelf
02/03/2004 10:15	Criminalistics Section	CRIM - Erica Blais's Work Area
02/03/2004 13:14	Sudbury Evidence Control Unit	Serology Shelf
02/26/2004 10:52	Criminalistics Section	CRIM - Tom Sendlenski's Work Area
03/03/2004 9:07	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
04/28/2004 8:53	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
10/14/2004 15:02	Sudbury Evidence Control Unit	Serology Shelf
08/08/2005 18:05	LIMS User	Diana L. Howery
08/08/2005 18:08	North Sudbury Facility	Criminalistics Incoming Cold Room
01/25/2006 16:38	Done Area - North Sudbury	Criminalistics Done Area
01/27/2006 7:19	LIMS User	Taylor C. Kopec
01/27/2006 8:22	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
02/21/2006 15:15	Evidence Disposition	Returned to Submitting Agency

2-1-01 ITEM: Sexual Assault Examination Form(s) - -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
02/03/2004 10:34	Criminalistics Section	CRIM - Erica Blais's Work Area
02/03/2004 13:14	Sudbury Evidence Control Unit	Serology Shelf
02/26/2004 10:52	Criminalistics Section	CRIM - Tom Sendlenski's Work Area
03/03/2004 9:07	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
04/28/2004 8:53	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
10/14/2004 15:02	Sudbury Evidence Control Unit	Serology Shelf
08/08/2005 18:05	LIMS User	Diana L. Howery
08/08/2005 18:08	North Sudbury Facility	Criminalistics Incoming Cold Room
01/25/2006 16:38	Done Area - North Sudbury	Criminalistics Done Area
01/27/2006 7:19	LIMS User	Taylor C. Kopec
01/27/2006 8:22	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
02/21/2006 15:15	Evidence Disposition	Returned to Submitting Agency

2-1-02 HSP: Known Blood Standard - (V) -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
02/03/2004 10:34	Criminalistics Section	CRIM - Erica Blais's Work Area
02/03/2004 10:34	LIMS User	Erica L. Blais
02/03/2004 13:14	Sudbury Evidence Control Unit	Evidence Room Refrigerator 1
11/24/2004 19:35	Evidence Disposition	Destroyed

2-1-02.1 MYLAR: Known Blood Standard - (V) -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
02/03/2004 10:35	LIMS User	Erica L. Blais
02/03/2004 19:39	Sudbury Evidence Control Unit	Evidence Room Freezer 4
12/30/2004 17:23	Sudbury Evidence Control Unit	Evidence Room Freezer 3
07/12/2005 8:21	Criminalistics Section	CRIM - Lynne Sarty's Work Area
07/12/2005 9:36	Sudbury Evidence Control Unit	Evidence Room Freezer 3
07/22/2005 14:01	Cold Storage "B"	Long Term Storage
Transferred to make space in Freezer 3. JKC/TCK 07/22/05.		
11/06/2008 12:43	Cold Storage "B"	Long Term Storage - Known Standards
06/21/2012 9:53	Cold Storage "B"	2004 Known Standards - Long Term Storage

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2-1-02.1.1 HSP: Known Blood Standard - (V) (

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
07/12/2005 8:52	LIMS User	Lynne Sarty
07/12/2005 8:53	LIMS User	Lynne Sarty
07/13/2005 8:06	Evidence Disposition	Mailed to Cellmark Diagnostics
04/10/2007 14:05	Sudbury Evidence Control Unit	Evidence Room Freezer 5
Returned from Orchid Cellmark DLH 11-07-07		
11/07/2007 16:29	LIMS User	Diana L. Howery
11/07/2007 16:30	Sudbury Evidence Control Unit	C1-B
11/09/2007 13:03	Cold Storage "B"	Long Term Storage
03/10/2009 9:45	Cold Storage "B"	Long Term Storage - Cuttings
12/20/2012 8:30	Cold Storage "B"	2004 Cuttings - Long Term Storage

2-1-03 ITEM: Saliva Sample - -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
02/03/2004 10:34	Criminalistics Section	CRIM - Erica Blais's Work Area
02/03/2004 13:14	Sudbury Evidence Control Unit	Serology Shelf
02/26/2004 10:52	Criminalistics Section	CRIM - Tom Sendlenski's Work Area
03/03/2004 9:07	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
04/28/2004 8:53	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
10/14/2004 15:02	Sudbury Evidence Control Unit	Serology Shelf
08/08/2005 18:05	LIMS User	Diana L. Howery
08/08/2005 18:08	North Sudbury Facility	Criminalistics Incoming Cold Room
01/25/2006 16:38	Done Area - North Sudbury	Criminalistics Done Area
01/27/2006 7:19	LIMS User	Taylor C. Kopec
01/27/2006 8:22	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
02/21/2006 15:15	Evidence Disposition	Returned to Submitting Agency

2-1-04 ITEM: External Genital Swab(s) - -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
03/03/2004 8:10	Criminalistics Section	CRIM - Tom Sendlenski's Work Area
03/03/2004 9:07	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
04/28/2004 8:53	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
10/14/2004 15:02	Sudbury Evidence Control Unit	Serology Shelf
08/08/2005 18:05	LIMS User	Diana L. Howery
08/08/2005 18:08	North Sudbury Facility	Criminalistics Incoming Cold Room
01/25/2006 16:38	Done Area - North Sudbury	Criminalistics Done Area
01/27/2006 7:19	LIMS User	Taylor C. Kopec
01/27/2006 8:22	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
02/21/2006 15:15	Evidence Disposition	Returned to Submitting Agency

2-1-05 HSP: Bite Mark(s) Swab(s) - 2 swabs, amy1+ -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
03/03/2004 8:10	Criminalistics Section	CRIM - Tom Sendlenski's Work Area
03/03/2004 8:59	LIMS User	Thomas P. Sendlenski
03/03/2004 9:07	Sudbury Evidence Control Unit	Evidence Room Freezer 3
03/28/2005 15:25	Criminalistics Section	CRIM - Jennifer Preisig's Work Area
03/30/2005 13:41	Sudbury Evidence Control Unit	Evidence Room Freezer 3
07/04/2005 14:34	Cold Storage "B"	Long Term Storage
07/12/2005 8:21	Criminalistics Section	CRIM - Lynne Sarty's Work Area

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07/12/2005 9:33	LIMS User	Lynne Sarty
07/13/2005 8:06	Evidence Disposition	Mailed to Cellmark Diagnostics
04/10/2007 14:05	Sudbury Evidence Control Unit	Evidence Room Freezer 5
Returned from Orchid Cellmark DLH 11-07-07		
11/07/2007 16:29	LIMS User	Diana L. Howery
11/07/2007 16:30	Sudbury Evidence Control Unit	C1-B
11/09/2007 13:03	Cold Storage "B"	Long Term Storage
03/10/2009 9:45	Cold Storage "B"	Long Term Storage - Cuttings
12/20/2012 8:30	Cold Storage "B"	2004 Cuttings - Long Term Storage

2-1-06 ITEM: Control Swab(s) - 2 swabs -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
03/03/2004 8:10	Criminalistics Section	CRIM - Tom Sendlenski's Work Area
03/03/2004 8:59	LIMS User	Thomas P. Sendlenski
03/03/2004 9:07	Sudbury Evidence Control Unit	Evidence Room Freezer 3
03/28/2005 15:25	Criminalistics Section	CRIM - Jennifer Preisig's Work Area
03/30/2005 13:41	Sudbury Evidence Control Unit	Evidence Room Freezer 3
07/04/2005 14:34	Cold Storage "B"	Long Term Storage
07/12/2005 8:21	Criminalistics Section	CRIM - Lynne Sarty's Work Area
07/12/2005 9:36	Cold Storage "B"	Long Term Storage
03/10/2009 9:45	Cold Storage "B"	Long Term Storage - Cuttings
12/20/2012 8:30	Cold Storage "B"	2004 Cuttings - Long Term Storage

2-1-07 ITEM: Head Hair Standard - -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
03/03/2004 8:10	Criminalistics Section	CRIM - Tom Sendlenski's Work Area
03/03/2004 9:07	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
04/28/2004 8:53	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
10/14/2004 15:02	Sudbury Evidence Control Unit	Serology Shelf
08/08/2005 18:05	LIMS User	Diana L. Howery
08/08/2005 18:08	North Sudbury Facility	Criminalistics Incoming Cold Room
01/25/2006 16:38	Done Area - North Sudbury	Criminalistics Done Area
01/27/2006 7:19	LIMS User	Taylor C. Kopec
01/27/2006 8:22	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
02/21/2006 15:15	Evidence Disposition	Returned to Submitting Agency

2-1-08 ITEM: Head Hair Combing - -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
03/03/2004 8:10	Criminalistics Section	CRIM - Tom Sendlenski's Work Area
03/03/2004 9:07	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
04/28/2004 8:53	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
10/14/2004 15:02	Sudbury Evidence Control Unit	Serology Shelf
08/08/2005 18:05	LIMS User	Diana L. Howery
08/08/2005 18:08	North Sudbury Facility	Criminalistics Incoming Cold Room
01/25/2006 16:38	Done Area - North Sudbury	Criminalistics Done Area
01/27/2006 7:19	LIMS User	Taylor C. Kopec
01/27/2006 8:22	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
02/21/2006 15:15	Evidence Disposition	Returned to Submitting Agency

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2-1-09 ITEM: Pubic Hair Standard - -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
03/03/2004 8:10	Criminalistics Section	CRIM - Tom Sendlenski's Work Area
03/03/2004 9:07	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
04/28/2004 8:53	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
10/14/2004 15:02	Sudbury Evidence Control Unit	Serology Shelf
08/08/2005 18:05	LIMS User	Diana L. Howery
08/08/2005 18:08	North Sudbury Facility	Criminalistics Incoming Cold Room
01/25/2006 16:38	Done Area - North Sudbury	Criminalistics Done Area
01/27/2006 7:19	LIMS User	Taylor C. Kopec
01/27/2006 8:22	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
02/21/2006 15:15	Evidence Disposition	Returned to Submitting Agency

2-1-10 ITEM: Pubic Hair Combing - -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
03/03/2004 8:10	Criminalistics Section	CRIM - Tom Sendlenski's Work Area
03/03/2004 9:07	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
04/28/2004 8:53	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
10/14/2004 15:02	Sudbury Evidence Control Unit	Serology Shelf
08/08/2005 18:05	LIMS User	Diana L. Howery
08/08/2005 18:08	North Sudbury Facility	Criminalistics Incoming Cold Room
01/25/2006 16:38	Done Area - North Sudbury	Criminalistics Done Area
01/27/2006 7:19	LIMS User	Taylor C. Kopec
01/27/2006 8:22	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
02/21/2006 15:15	Evidence Disposition	Returned to Submitting Agency

2-1-11 ITEM: Photograph(s) - - Victim Photograph from kit -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
03/03/2004 8:10	Criminalistics Section	CRIM - Tom Sendlenski's Work Area
03/03/2004 9:07	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
04/28/2004 8:53	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
10/14/2004 15:02	Sudbury Evidence Control Unit	Serology Shelf
08/08/2005 18:05	LIMS User	Diana L. Howery
08/08/2005 18:08	North Sudbury Facility	Criminalistics Incoming Cold Room
01/25/2006 16:38	Done Area - North Sudbury	Criminalistics Done Area
01/27/2006 7:19	LIMS User	Taylor C. Kopec
01/27/2006 8:22	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
02/21/2006 15:15	Evidence Disposition	Returned to Submitting Agency

2-2 BOX: Sweater -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 14:09	LIMS User	Christian V. Roy
01/27/2004 14:11	Sudbury Evidence Control Unit	C7-C
03/03/2004 9:08	Done Room -Sudbury (ECU)	D6B
03/05/2004 14:00	Done Room -Sudbury (ECU)	D6B
05/07/2004 8:45	Done Room -Sudbury (ECU)	D6B
10/14/2004 15:02	Sudbury Evidence Control Unit	C119
12/29/2004 16:37	Criminalistics Section	CRIM - Deanna R. Dygan's Work Area
01/06/2005 13:16	Done Room -Sudbury (ECU)	D7D
02/18/2005 11:24	Evidence Disposition	Returned to Submitting Agency

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2-3 BOX: Slacks - gray -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 14:10	LIMS User	Christian V. Roy
01/27/2004 14:11	Sudbury Evidence Control Unit	C7-C
03/03/2004 9:08	Done Room -Sudbury (ECU)	D6E
03/05/2004 14:00	Done Room -Sudbury (ECU)	D6B
05/07/2004 8:45	Done Room -Sudbury (ECU)	D6B
10/14/2004 15:02	Sudbury Evidence Control Unit	C119
12/29/2004 16:37	Criminalistics Section	CRIM - Deanna R. Dygan's Work Area
01/06/2005 13:16	Done Room -Sudbury (ECU)	D7D
02/18/2005 11:24	Evidence Disposition	Returned to Submitting Agency

2-4 BOX: Shirt - t

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 14:10	LIMS User	Christian V. Roy
01/27/2004 14:11	Sudbury Evidence Control Unit	C7-C
03/03/2004 9:08	Done Room -Sudbury (ECU)	D6E
03/05/2004 14:00	Done Room -Sudbury (ECU)	D6B
05/07/2004 8:45	Done Room -Sudbury (ECU)	D6B
10/14/2004 15:02	Sudbury Evidence Control Unit	C119
12/29/2004 16:37	Criminalistics Section	CRIM - Deanna R. Dygan's Work Area
01/06/2005 13:16	Done Room -Sudbury (ECU)	D7D
02/18/2005 11:24	Evidence Disposition	Returned to Submitting Agency

2-5 BOX: Underpants -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 14:10	LIMS User	Christian V. Roy
01/27/2004 14:11	Sudbury Evidence Control Unit	C7-C
03/03/2004 9:08	Done Room -Sudbury (ECU)	D6E
03/05/2004 14:00	Done Room -Sudbury (ECU)	D6B
05/07/2004 8:45	Done Room -Sudbury (ECU)	D6B
10/14/2004 15:02	Sudbury Evidence Control Unit	C119
12/29/2004 16:37	Criminalistics Section	CRIM - Deanna R. Dygan's Work Area
01/06/2005 13:16	Done Room -Sudbury (ECU)	D7D
02/18/2005 11:24	Evidence Disposition	Returned to Submitting Agency

2-6 BOX: Slipper (footwear) - one pair -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 14:10	LIMS User	Christian V. Roy
01/27/2004 14:11	Sudbury Evidence Control Unit	C7-C
03/03/2004 9:08	Done Room -Sudbury (ECU)	D6E
03/05/2004 14:00	Done Room -Sudbury (ECU)	D6B
05/07/2004 8:45	Done Room -Sudbury (ECU)	D6B
10/14/2004 15:02	Sudbury Evidence Control Unit	C119
12/29/2004 16:37	Criminalistics Section	CRIM - Deanna R. Dygan's Work Area
01/06/2005 13:16	Done Room -Sudbury (ECU)	D7D
02/18/2005 11:24	Evidence Disposition	Returned to Submitting Agency

2-7 BOX: Sweatpants -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 14:10	LIMS User	Christian V. Roy
01/27/2004 14:11	Sudbury Evidence Control Unit	C7-C
03/03/2004 9:08	Done Room -Sudbury (ECU)	D6E
03/05/2004 14:00	Done Room -Sudbury (ECU)	D6B
05/07/2004 8:45	Done Room -Sudbury (ECU)	D6B
10/14/2004 15:02	Sudbury Evidence Control Unit	C119
12/29/2004 16:37	Criminalistics Section	CRIM - Deanna R. Dygan's Work Area
01/06/2005 13:16	Done Room -Sudbury (ECU)	D7D
02/18/2005 11:24	Evidence Disposition	Returned to Submitting Agency

2-8 BOX: Jacket - fleece pullover -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 14:11	LIMS User	Christian V. Roy
01/27/2004 14:11	Sudbury Evidence Control Unit	C7-C
03/03/2004 9:08	Done Room -Sudbury (ECU)	D6E
03/05/2004 14:00	Done Room -Sudbury (ECU)	D6B
05/07/2004 8:45	Done Room -Sudbury (ECU)	D6B
10/14/2004 15:02	Sudbury Evidence Control Unit	C119
12/29/2004 16:37	Criminalistics Section	CRIM - Deanna R. Dygan's Work Area
01/06/2005 13:16	Done Room -Sudbury (ECU)	D7D
02/18/2005 11:24	Evidence Disposition	Returned to Submitting Agency

2-9 BOX: Sock(s) -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 14:11	LIMS User	Christian V. Roy
01/27/2004 14:11	Sudbury Evidence Control Unit	C7-C
03/03/2004 9:08	Done Room -Sudbury (ECU)	D6E
03/05/2004 14:00	Done Room -Sudbury (ECU)	D6B
05/07/2004 8:45	Done Room -Sudbury (ECU)	D6B
10/14/2004 15:02	Sudbury Evidence Control Unit	C119
12/29/2004 16:37	Criminalistics Section	CRIM - Deanna R. Dygan's Work Area
01/06/2005 13:16	Done Room -Sudbury (ECU)	D7D
02/18/2005 11:24	Evidence Disposition	Returned to Submitting Agency

2-10 HSP: Extract Tube of Item - Returned from Orchid Cellmark
DLH 12-11-07 -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 14:01	LIMS User	Diana L. Howery
07/06/2007 14:10	Sudbury Evidence Control Unit	Evidence Room Freezer 5
Returned from Orchid Cellmark DLH 12-11-07		
12/11/2007 16:02	LIMS User	Diana L. Howery
12/11/2007 16:02	Sudbury Evidence Control Unit	C1-B
12/12/2007 16:53	Cold Storage "B"	Long Term Storage
03/10/2009 9:45	Cold Storage "B"	Long Term Storage - Cuttings
12/20/2012 8:30	Cold Storage "B"	2004 Cuttings - Long Term Storage

3-1 BOX: Boxer shorts - Steven Putnam -

10

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/29/2004 15:27	LIMS User	Bruce W. Cranstoun
01/29/2004 15:29	Sudbury Evidence Control Unit	C12
08/20/2004 15:04	Done Room -Sudbury (ECU)	D4E
10/14/2004 15:02	Sudbury Evidence Control Unit	C119
02/21/2005 14:52	Cold Storage "B"	CSB H50
05/30/2005 13:41	Cold Storage "B"	CSB H48
Evidence moved to make room for bigger boxes that were located in CSA. TCK/JKC 5/30/05		
06/29/2005 15:58	Cold Storage "B"	CSB A28
Evidence was moved to different shelves to make room for incoming cases and organize CSB. TCK 6/29/05		
02/21/2006 15:15	Evidence Disposition	Returned to Submitting Agency

3-2 BOX: Jacket - Steven Putnam -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/29/2004 15:28	LIMS User	Bruce W. Cranstoun
01/29/2004 15:29	Sudbury Evidence Control Unit	C12
08/20/2004 15:04	Done Room -Sudbury (ECU)	D4E
10/14/2004 15:02	Sudbury Evidence Control Unit	C119
02/21/2005 14:52	Cold Storage "B"	CSB H50
05/30/2005 13:41	Cold Storage "B"	CSB H48
Evidence moved to make room for bigger boxes that were located in CSA. TCK/JKC 5/30/05		
06/29/2005 15:58	Cold Storage "B"	CSB A28
Evidence was moved to different shelves to make room for incoming cases and organize CSB. TCK 6/29/05		
02/21/2006 15:15	Evidence Disposition	Returned to Submitting Agency

3-3 BOX: Jeans - Steven Putnam -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/29/2004 15:28	LIMS User	Bruce W. Cranstoun
01/29/2004 15:29	Sudbury Evidence Control Unit	C12
08/20/2004 15:04	Done Room -Sudbury (ECU)	D4E
10/14/2004 15:02	Sudbury Evidence Control Unit	C119
02/21/2005 14:52	Cold Storage "B"	CSB H50
05/30/2005 13:41	Cold Storage "B"	CSB H48
Evidence moved to make room for bigger boxes that were located in CSA. TCK/JKC 5/30/05		
06/29/2005 15:58	Cold Storage "B"	CSB A28
Evidence was moved to different shelves to make room for incoming cases and organize CSB. TCK 6/29/05		
02/21/2006 15:15	Evidence Disposition	Returned to Submitting Agency

3-4 BOX: Shirt - Steven Putnam -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/29/2004 15:29	LIMS User	Bruce W. Cranstoun
01/29/2004 15:29	Sudbury Evidence Control Unit	C12
08/20/2004 15:04	Done Room -Sudbury (ECU)	D4E
10/14/2004 15:02	Sudbury Evidence Control Unit	C119
02/21/2005 14:52	Cold Storage "B"	CSB H50
05/30/2005 13:41	Cold Storage "B"	CSB H48
Evidence moved to make room for bigger boxes that were located in CSA. TCK/JKC 5/30/05		
06/29/2005 15:58	Cold Storage "B"	CSB A28

11

Evidence was moved to different shelves to make room for incoming cases and organize CSB. TCK 6/29/05

02/21/2006 15:15

Evidence Disposition

Returned to Submitting Agency

3-5

BOX: Pair of boots - Steven Putnam -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/29/2004 15:29	LIMS User	Bruce W. Cranstoun
01/29/2004 15:29	Sudbury Evidence Control Unit	C12
08/20/2004 15:04	Done Room -Sudbury (ECU)	D4E
10/14/2004 15:02	Sudbury Evidence Control Unit	C119
02/21/2005 14:52	Cold Storage "B"	CSB H50
05/30/2005 13:41	Cold Storage "B"	CSB H48
Evidence moved to make room for bigger boxes that were located in CSA. TCK/JKC 5/30/05		
06/29/2005 15:58	Cold Storage "B"	CSB A28
Evidence was moved to different shelves to make room for incoming cases and organize CSB. TCK 6/29/05		
02/21/2006 15:15	Evidence Disposition	Returned to Submitting Agency

3-6

BOX: Jacket - # 2 - Steven Putnam -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/29/2004 15:29	LIMS User	Bruce W. Cranstoun
01/29/2004 15:29	Sudbury Evidence Control Unit	C12
08/20/2004 15:04	Done Room -Sudbury (ECU)	D4E
10/14/2004 15:02	Sudbury Evidence Control Unit	C119
02/21/2005 14:52	Cold Storage "B"	CSB H50
05/30/2005 13:41	Cold Storage "B"	CSB H48
Evidence moved to make room for bigger boxes that were located in CSA. TCK/JKC 5/30/05		
06/29/2005 15:58	Cold Storage "B"	CSB A28
Evidence was moved to different shelves to make room for incoming cases and organize CSB. TCK 6/29/05		
02/21/2006 15:15	Evidence Disposition	Returned to Submitting Agency

4-1

PENV: Compact Disk - - master of vehicle at Harvard P.D. -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
02/11/2004 14:52	CSSS - Devens (304)	CSSS Case File Envelope

4-1.1

PENV: Compact Disk - - working copy of vehicle at Harvard P.D. -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
02/11/2004 14:52	CSSS - Devens (304)	CSSS Case File Envelope

5-1

CODKIT: Saliva Collection Kit - Steven Putnam -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
11/29/2004 11:03	LIMS User	Diana L. Howery
11/29/2004 11:08	Sudbury Evidence Control Unit	C17
07/12/2005 8:21	Criminalistics Section	CRIM - Lynne Sarty's Work Area
07/12/2005 9:36	Sudbury Evidence Control Unit	Evidence Room Freezer 3
07/22/2005 14:01	Cold Storage "B"	Long Term Storage
Transferred to make space in Freezer 3. JKC/TCK 07/22/05.		
11/06/2008 12:43	Cold Storage "B"	Long Term Storage - Known Standards

06/21/2012 9:53

Cold Storage "B"

2004 Known Standards - Long Term Storage

5-1.1

HSP: Saliva Collection Kit - Steven Putnam -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
07/12/2005 9:14	LIMS User	Lynne Sarty
07/12/2005 9:14	LIMS User	Lynne Sarty
07/13/2005 8:06	Evidence Disposition	Mailed to Cellmark Diagnostics
04/10/2007 14:05	Sudbury Evidence Control Unit	Evidence Room Freezer 5
Returned from Orchid Cellmark DLH 11-07-07		
11/07/2007 16:29	LIMS User	Diana L. Howery
11/07/2007 16:30	Sudbury Evidence Control Unit	C1-B
11/09/2007 13:03	Cold Storage "B"	Long Term Storage
03/10/2009 9:45	Cold Storage "B"	Long Term Storage - Cuttings
12/20/2012 8:30	Cold Storage "B"	2004 Cuttings - Long Term Storage

FILE-304

FILE: Case File of CSSS - Devens - -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 13:38	CSSS - Devens (304)	CSSS Lab Area
11/28/2005 14:14	CSSS - Devens (304)	CSSS Closed Case File Cabinet
05/16/2007 13:00	LIMS User	Jessica L. Holbrook
05/18/2007 15:18	Done Room -Sudbury (ECU)	DONE ROOM KIT SHELF
Temporarily on hold - all files for transport to North Sudbury archive file room. JLH 5/16/07.		
05/21/2007 9:31	LIMS User	Jessica L. Holbrook
05/21/2007 14:18	CSSS - Sudbury (301)	CSSS Closed Case File Archive
10/31/2014 14:55	CSSS - Maynard	CSSS Closed Case File Archive

file

FILE: Criminalistics File Folder - electronic data received 9/23/05; deduced minor matches suspect, Cellmark Lab #MA05-0003, CD# 360 -

<u>Date / Time</u>	<u>Custody Of</u>	<u>Location / Person</u>
01/27/2004 14:01	Cases to be filed	Cases To Be Filed In Active System
01/27/2004 14:13	Cases to be filed	Streamline Cases to be Assigned
01/30/2004 16:44	Mailbox for	Debbie McKillop Shields
02/02/2004 16:45	Cases to be filed	Streamline Cases to be Assigned-Crim
02/02/2004 16:48	Criminalistics Section	CRIM - Erica Blais's Work Area
02/03/2004 11:09	Criminalistics Section	Cases In Review
TPS		
02/09/2004 14:37	Criminalistics Section	CRIM - Tom Sendlenski's Work Area
03/03/2004 10:32	Criminalistics Section	Cases In Review
PL		
03/25/2004 12:32	Cases to be filed	Completed File System
10/13/2004 16:17	Cases to be filed	Crim Cases to be Assigned
11/03/2004 14:55	Cases to be filed	Roundtable Cases to be Assigned
12/02/2004 14:34	Criminalistics Section	CRIM - Deanna R. Dygan's Work Area
01/04/2005 21:26	Criminalistics Section	Cases In Review
BAS		
01/05/2005 14:11	Cases to be filed	Completed File System
01/20/2005 12:01	Cases to be filed	Cases being processed by CMU
03/29/2005 15:13	Mailbox for	Jennifer J. Preisig
03/29/2005 15:21	Criminalistics Section	CRIM - Jennifer Preisig's Work Area
03/29/2005 16:30	Criminalistics Section	Cases In Review
03/30/2005 15:03	Cases to be filed	Completed File System
05/03/2005 12:30	Cases to be filed	Cases being processed by CMU
06/14/2005 11:03	DNA SECTION	DNA cases held

75 Mass.App.Ct. 472
Appeals Court of Massachusetts,
Worcester.

COMMONWEALTH

v.

Steven M. PUTNAM.

No. 07-P-958.

Argued April 7, 2009.

Decided Oct. 19, 2009.

Synopsis

Background: Defendant was convicted by a jury in the Superior Court Department, Worcester County, Francis R. Fecteau, J., of home invasion and armed assault. Defendant appealed.

Holdings: The Appeals Court, Katzmann, J., held that:

[1] evidence was sufficient to establish unlawful entry, in support of convictions for home invasion and armed assault in a dwelling;

[2] the trial court's jury instruction on consent to enter a dwelling was proper and did not create a substantial risk of miscarriage of justice; and

[3] defendant's convictions for both armed assault in a dwelling and home invasion were not duplicative.

Affirmed.

West Headnotes (5)

[1] **Assault and Battery** ⇨ Aggravated or felony assault

Comm. Exhibit B

Docket Date	Docket Text	File Ref Nbr.
12/11/2015	The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Steven Putnam Attorney: Donna Marie Haran, Esq. Holding Institution: MCI - Cedar Junction (at Walpole)	
12/11/2015	MEMORANDUM & ORDER: For the foregoing reasons, it is hereby ORDERED that the defendant's Motion for New Trial is DENIED.	78
12/28/2015	Notice of appeal filed (Motion for New Trial, Judge Frison) Applies To: Putnam, Steven (Defendant)	79
04/06/2016	Statement of Case Appeal filed:	80
04/06/2016	Appeal: notice of assembly of record	81
04/11/2016	Notice of Entry of appeal received from the Appeals Court	82
05/18/2016	Rescript received from Appeals Court; judgment AFFIRMED Order denying the motion for new trial affirmed..	83
07/25/2016	Defendant's Motion for Post Conviction Access to Forensic and Scientific Analysis; Affidavit in Support	84
08/02/2016	ORDER: re: Def't's Motion for Post-Conviction Access to Forensic and Scientific Analysis ...Because the trial judge is not available to hear this matter, the case is assigned to Judge Richard T. Tucker for any action he may deem appropriate.	85
08/02/2016	ORDER: re: Motion for Post Conviction Access to Forensic and Scientific Analysis ...if the Commonwealth wishes to respond to this motion addressing the sole issue of whether the motion meets the requirements under G. L. c.278A, s3(e), the Commonwealth shall do so within 10 days of this Order. If the Commonwealth does not intend to file a response at this stage, Asst. Clerk, Gail Dempsey should be notified. So Ordered.	86
08/02/2016	The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Steven Putnam Attorney: Donna Marie Haran, Esq. Holding Institution: MCI - Cedar Junction (at Walpole)	
09/06/2016	ORDER: on Defendant's Motion for Post-Conviction Access to Forensic and Scientific Analysis Commonwealth has 60 days to respond.	87
09/08/2016	The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Steven Putnam Attorney: Donna Marie Haran, Esq. Holding Institution: MCI - Cedar Junction (at Walpole)	

Case Disposition

Disposition	Date	Case Judge
Disposed	05/23/2014	

Burglary ⇌ Breaking and entry

Evidence was sufficient to establish unlawful entry, in support of convictions for home invasion and armed assault in a dwelling; the victim became disturbed and frightened by the defendant's visit earlier on the day of the incident, she telephoned her neighbor to warn him of the defendant's "bad shape" and instructed him to telephone the police if she telephoned him back, when defendant returned later that day the victim permitted him to enter because she "thought it would be better to open the door than to try and keep him on the other side," and defendant was not a frequent visitor to the victim's house. M.G.L.A. c. 265, §§ 18A, 18C.

Cases that cite this headnote

[2] Assault and Battery ⇌ Nature and Elements of Criminal Assault

Assault and Battery ⇌ Consent

Burglary ⇌ Breaking and Entry

Burglary ⇌ Consent of owner or occupant of building

Entry is an element that must be proven by the Commonwealth for the offenses of both home invasion and armed assault in a dwelling; an entry into a dwelling is not unlawful if it is consensual, in response to an invitation, or privileged. M.G.L.A. c. 265, §§ 18A, 18C.

2 Cases that cite this headnote

[3] Assault and Battery ⇌ Consent

Burglary ⇌ Consent of owner or occupant of building

For the purpose of the offenses of both home invasion and armed assault in a dwelling, purported consent to enter a dwelling cannot be considered legally significant unless the occupant has been made aware that the person at the door is armed with a dangerous weapon and is about to commit an assault once inside. M.G.L.A. c. 265, §§ 18A, 18C.

3 Cases that cite this headnote

[4] Burglary ⇌ Owner's consent

The trial court's jury instruction on consent to enter a dwelling, which provided that consent "may be negated if the person giving consent is unaware of the defendant's being armed with a dangerous weapon or of an intent to commit a crime while inside," was proper and did not create a substantial risk of miscarriage of justice, in

prosecution for home invasion; the instruction informed the jury that the absence of either element negated consent. M.G.L.A. c. 265, § 18C.

1 Cases that cite this headnote

[5] Criminal Law → Robbery and burglary

Defendant's convictions for both armed assault in a dwelling and home invasion were not duplicative, even though the convictions were both based on the same act; the two crimes in question had mutually exclusive elements. M.G.L.A. c. 265, §§ 18A, 18C.

1 Cases that cite this headnote

Attorneys and Law Firms

****970** Debra S. Krupp, Committee for Public Counsel Services, for the defendant.

Donna-Marie Haran, Assistant District Attorney, for the Commonwealth.

Present: COHEN, KATZMANN, & GRAINGER, JJ.

Opinion

KATZMANN, J.

***472** Having been convicted by a Superior Court jury of home invasion, in violation of G.L. c. 265, § 18C; and armed assault in a dwelling, in violation of G.L. c. 265, § 18A, the defendant Steven M. Putnam now appeals.¹ He contends ***473** that the convictions must be reversed because the evidence was insufficient to prove that he entered the alleged victim's home unlawfully, and because the instruction on consent to enter was erroneous. He also claims that his conviction of armed assault in a dwelling must be reversed because it was duplicative of the home invasion conviction. We affirm.

Background. We view the evidence in the light most favorable to the Commonwealth. *Commonwealth v. Nolin*, 448 Mass. 207, 215, 859 N.E.2d 843 (2007). The victim, a self-employed counseling psychologist, lived on Old Mill Road in Harvard. Old Mill Road is a two-lane road with fields and woods, as well as isolated houses in the surrounding area. The victim's nearest neighbors were Anne Marie Arnold and Hank Emerson, who lived together about one-eighth of one mile down the road, on a working farm. The defendant lived on

Arnold's property in an apartment across from the main house. He worked on the farm as a handyman and a helper.

The victim first met the defendant in 2001 at a block party. In 2002, the victim paid the defendant to clean leaves from her roof and her gutters. Around the same time, they had a few brief conversations. The victim occasionally saw the defendant on Arnold's property.

The day after Thanksgiving in 2003, in the early evening, the defendant knocked **971 on the victim's front door and asked to come into her house. He appeared upset and intoxicated. After she allowed him in, the defendant asked the victim for help; he told her that he had been drinking and doing drugs and that he was not taking his medication. The victim told the defendant to stop drinking, to stop doing drugs, and to take his medication. The defendant then rambled on for about one-half hour; the victim thought the defendant was asking for her professional opinion but she did not give him one. The victim tried to bring the conversation to a close; the defendant eventually left. The next day, the victim called Emerson and told him that she was concerned about the defendant, that she thought he was in bad shape and doing drugs, and that he seemed mentally unstable.

On January 18, 2004, Arnold asked the defendant to leave the property because he had not performed any work on the farm for the prior two months. Arnold suspected that the defendant was drinking and doing drugs.

*474 On January 26, 2004, around 8:30 P.M., while the victim was on the telephone, the defendant knocked on her door. The victim opened the door a few inches and saw the defendant. The defendant said that he wanted to come in and speak with her. She told him to go home and to telephone her in one-half hour, and she would speak to him on the telephone. She then closed the door and returned to her telephone conversation. Around 8:55 P.M., the victim finished her conversation and telephoned Emerson to inform him that the defendant had been to her house and that "he might be in bad shape." She also told Emerson that if he received a telephone call from her that evening, he should telephone the police and have them come to her house, no matter what she said.²

Shortly after speaking with Emerson, the victim heard a knock on her door. When she went to the door, the defendant was standing there and appeared distressed. She opened the door because the door had glass in it and she "thought it would be better to open the door than to try and keep him on the other side." The defendant came into the house and the victim told him to sit at the dining room table. She sat at the table with him and noticed that he was disturbed, and that he had blood on his left hand. She asked the defendant if he was suicidal, to which he replied that he was not. The defendant began to talk to the victim, mumbling to the point that she "had trouble understanding him." During this conversation, the victim

got up, picked up the telephone, and told the defendant that she did not think he was all right, that she thought they should telephone Emerson, and that she thought he needed some help. The defendant then grabbed her around her back, shoved her, punched her face, and violently knocked the telephone out of her hand, throwing it on the floor where it broke. He then began to punch the victim, pull her hair, and maneuver her around. As he was beating the victim, he asked, "Why did you call Hank?"

At some point, the defendant pulled a knife out of his pocket. He said, "You can make this hard or you can make this easy." He then tried to force the victim to go upstairs. When they got to the bottom of the stairs, the victim sat "heavily" and resisted. *475 After the defendant's attempts to push the victim up the stairs failed, he threw her on a couch located **972 near the stairs in her living room and ripped off the clothing she wore on the bottom of her body.³ He then pulled his pants down and lay on top of the victim. He put his finger into the victim's vagina and began thrusting.⁴ The victim kept telling the defendant that "this ... was not good," that it was "not going to happen," and that it was something she "didn't want to do." Nonetheless, the defendant continued raping her.

The defendant then sat up and told the victim to take her top off. She sat up and made a gesture as though she was going to comply. When the defendant began to pull his own shirt over his head, the victim ran toward the front door. She ran outside, naked from the waist down and not wearing shoes, towards Arnold's farmhouse. Arnold and Emerson let her into their house and the victim, who was hysterical and sobbing, told them that the defendant "had tried to rape" her. Emerson immediately called the police and they arrived at the house within ten minutes.

The police proceeded to the victim's residence and conducted a preliminary search. The police found a knife outside the victim's house.

The defendant testified in his own defense. He admitted to having had a long-term alcohol problem. When he moved into Arnold's apartment in 2000 he had been sober for eleven years; however, he did not remain sober. The defendant testified that he came to the victim's house on the day of the incident because he knew that the victim was a doctor and he thought she could help him in some way, such as getting him into a detoxification program. When he came to the victim's home, she invited him into the house. After some conversation, the victim told the defendant that she was going to telephone Emerson, and that Emerson would telephone the police. The defendant became afraid; he recently had been involved in two "DUI" (driving under the influence) cases and had been warned that if he was convicted of a third offense he would go to jail for six months.

***476** The defendant testified that he then grabbed the victim and tried to persuade her not to telephone Emerson. Next, he kissed her, and he thought that she kissed him back. The defendant then offered to the victim to go upstairs but she refused. Next, they were on the couch; the defendant thought that the victim went to the couch willingly. He thought they were engaged in a consensual activity until the victim asked the defendant to stop. In response, the defendant stopped. He then sat up, the victim sat up, and, then, the victim ran out the door. The defendant denied putting his finger in the victim's vagina. Although the defendant had a knife, he did not threaten the victim with it. He tried to give the victim his knife because he was afraid that he was going to cut his wrists.

A few minutes after the victim ran out of her house, the defendant returned to his apartment, grabbed "a bunch of beers," and walked out into the woods. The next day, he found himself in Leominster, walking down the railroad tracks. His mother picked him up at the Leominster Public Library and brought him to Emerson Hospital, where he was arrested.

****973 [1]** *Discussion. A. Convictions of home invasion and of armed assault in a dwelling.* The defendant claims that there was insufficient evidence of an unlawful entry to sustain convictions of home invasion and of armed assault in a dwelling. The crime of home invasion, G.L. c. 265, § 18C, requires that the defendant "(1) 'knowingly enter[ed] the dwelling place of another'; (2) 'knowing or having reason to know that one or more persons are present within' (or entered without such knowledge but then remained in the dwelling place after acquiring or having reason to acquire such knowledge); (3) 'while armed with a dangerous weapon'; and (4) 'use[d] force or threaten [ed] the imminent use of force upon any person within such dwelling place whether or not injury occur[red], or intentionally cause[d] any injury to any person within such dwelling place.' " *Commonwealth v. Doucette*, 430 Mass. 461, 465–466, 720 N.E.2d 806 (1999), quoting from G.L. c. 265, § 18C. See *Commonwealth v. Brown*, 451 Mass. 200, 205, 884 N.E.2d 488 (2008). See also *Commonwealth v. Stokes*, 440 Mass. 741, 746–747, 802 N.E.2d 88 (2004). "Conviction under G.L. c. 265, § 18A, of armed assault in a dwelling requires proof of three elements: (1) entry of a dwelling while armed[;] (2) an assault on someone in the dwelling; and ***477** (3) a specific intent, accompanying the assault, to commit a felony." *Commonwealth v. Donoghue*, 23 Mass.App.Ct. 103, 111–112, 499 N.E.2d 832 (1986).

[2] [3] In short, entry is an element that must be proven by the Commonwealth for the offenses of both home invasion and armed assault in a dwelling. An entry into a dwelling is not unlawful if it is consensual, in response to an invitation, or privileged. See *Commonwealth v. Mahar*, 430 Mass. 643, 646–647, 722 N.E.2d 461 (2000). See also *Commonwealth v. Dunn*, 43 Mass.App.Ct. 58, 60, 680 N.E.2d 1178 (1997); *Commonwealth v. Fleming*, 46 Mass.App.Ct. 394, 396, 706 N.E.2d 1138 (1999). "A consensual entry, however, does not always correlate with a lawful entry.... [P]urported consent [to entry] cannot be considered

legally significant unless the occupant has been made aware that the person at the door is armed with a dangerous weapon and is about to commit an assault once inside.” *Mahar*, *supra* at 652–653, 722 N.E.2d 461. See *Commonwealth v. Morris*, 64 Mass.App.Ct. 51, 54, 831 N.E.2d 338 (2005). Thus, the *Mahar* court affirmed the defendant’s home invasion conviction, concluding that the entry was unlawful where the defendant was admitted into the home by a person who was unaware that the defendant entered the home while armed, with the intent to commit an assault upon that person in the dwelling. *Mahar*, *supra* at 647, 651–653, 722 N.E.2d 461.

In this case, the jury’s determination was based largely on a credibility evaluation of the testimony of the victim and of the defendant. While the crime of home invasion “is not intended to encompass situations where an invited guest in a home suddenly turns violent,” *id.* at 652 n. 6, 722 N.E.2d 461, this is not the evidence here. Here, the victim became disturbed and frightened by the defendant’s visit earlier on the day of the incident; she telephoned her neighbor to warn him of the defendant’s “bad shape” and instructed him to telephone the police if she telephoned him back. As in *Mahar*, while the victim initially permitted the defendant’s entry, a jury permissibly could find that she did not know he was armed with a knife and that he intended to attack her once inside. Additionally, here, when the defendant arrived at the victim’s house, she let him in her house because she “thought it would be better to open the door than to try and keep him on the other side.” From all this evidence, the jury could infer that the defendant **974 had instilled fear in the victim, who only allowed *478 him into her house because she felt that she had no other choice. Moreover, there was no evidence that the defendant was a frequent visitor at the victim’s house, that he was accustomed to entering without explicit permission, or that the defendant and the victim were in any type of ongoing relationship. See generally *id.* at 647, 722 N.E.2d 461. Contrast *Commonwealth v. Fleming*, 46 Mass.App.Ct. at 396–397, 706 N.E.2d 1138 (defendant entitled to jury instruction on consensual entry where defendant was frequent visitor at facility); *Commonwealth v. Sinnarano*, 50 Mass.App.Ct. 312, 314–316, 737 N.E.2d 488 (2000) (defendant entitled to jury instruction on consent where there was evidence that defendant and victim had been in some form of ongoing relationship and that defendant was frequent visitor at victim’s house). The evidence showed that, once inside the house, the defendant pulled out a knife, and ultimately dragged the victim to the couch and raped her. The totality of the evidence warranted the jury’s determination that the defendant’s entry into the victim’s dwelling was unlawful.

[4] B. *Jury instructions.* In defining home invasion, the judge first read to the jury the pertinent text of G.L. c. 265, § 18C, and then gave an almost verbatim recital of the model jury instruction on home invasion. See Massachusetts Superior Court Criminal Practice Jury Instructions § 2.31 (Mass. Continuing Legal Educ. 1999 & Supp. 2003). Because an issue in the case was whether the defendant lawfully entered the victim’s home, in keeping with *Morris*, 64

Com. v. Putnam, 75 Mass.App.Ct. 472 (2009)
914 N.E.2d 969

Mass.App.Ct. at 54, 831 N.E.2d 338, the judge included in his instruction guidance regarding consensual entry. The judge instructed:

"The first element which the Commonwealth must prove beyond a reasonable doubt is that the defendant entered the dwelling of another. An entry is the unlawful, unconsented making of one's way into a dwelling.... The Commonwealth must also prove beyond a reasonable doubt that the defendant had no right of habitation or occupancy at the time of entry, that the defendant made a nonconsensual entry into the dwelling place. While consent to enter may be considered as evidence that the entry was lawful, consent may be negated if the person giving consent is unaware of the defendant's being armed with a dangerous weapon or of an intent to commit a crime while inside."

*479 The defendant asserts that the judge erred and that the error created a substantial risk of a miscarriage of justice when he instructed that consent to enter a dwelling "may be negated if the person giving consent is unaware of the defendant's being armed with a dangerous weapon *or* of an intent to commit a crime while inside" (emphasis supplied).⁵ He points to the court's holding in *Mahar*, 430 Mass. at 652–653, 722 N.E.2d 461, that "consent [to entry] cannot be considered legally significant unless the occupant has been made aware that the person at the door is armed with a dangerous weapon and is about to commit an assault once inside." The defendant claims that the jury should have been instructed that consent may be negated if the person giving consent is unaware that the defendant is armed *and* intends to commit a crime once inside the dwelling.

**975 The defendant's argument is unpersuasive because the judge's instruction is indeed consistent with *Mahar*, which requires both elements for consent to be valid. The instruction, conversely, properly informs the jury, that the absence of either element will *negate* consent. *Mahar* does not require that the Commonwealth prove that the occupant has been made aware *both* that defendant was armed with a dangerous weapon and that he intended to commit an assault once inside the dwelling. That is to say, if the Commonwealth shows that either element was not present, then there was no consent. Consistent with a commonsense understanding, the law protects the sanctity and the safety of the occupant within her dwelling, and reflects the view that the entry by an outsider can be considered permissive only if the occupant, with relevant information, is aware of the risks to her safety, yet freely allows the entry. Thus, permissive entry, premised on consent to enter, is negated if the occupant purportedly giving consent is not aware that the person who is entering is armed. Alternatively, if the occupant is aware that the person is armed, but unaware that he intends to commit a crime once inside, permissive entry also is negated. "[A]s a matter of public policy, ... an occupant of a dwelling cannot consent to allow an armed intruder ... inside to

*480 commit an assault.” *Id.* at 653, 722 N.E.2d 461. See *Morris*, 64 Mass.App.Ct. at 54 n. 4, 831 N.E.2d 338. There was no error here.⁶

[5] *C. Duplicative convictions.* Finally, the defendant asserts that while armed assault in a dwelling is not a lesser included offense of home invasion, because the defendant was convicted of both offenses on the basis of the same act, and the two crimes are so closely related, the defendant should not be subject to punishment for both.

The traditional rule, embodied in *Morey v. Commonwealth*, 108 Mass. 433, 434 (1871), and employed by Massachusetts courts on the issues of double jeopardy and duplicative offenses, provides that “a defendant may properly be punished for two crimes arising out of the same course of conduct provided that each crime requires proof of an element that the other does not.” *Commonwealth v. Keohane*, 444 Mass. 563, 574, 829 N.E.2d 1125 (2005), quoting from *Commonwealth v. Arriaga*, 44 Mass.App.Ct. 382, 385–386, 691 N.E.2d 585 (1998).⁷ The vitality of that elements-based rule was affirmed in *Commonwealth v. Vick*, 454 Mass. 418, 910 N.E.2d 339 (2009). There, the Supreme Judicial Court stated, “This elements-based approach remains the standard for determining whether multiple convictions stemming from one criminal transaction are duplicative. See **976 *Commonwealth v. Cabrera*, 449 Mass. 825, 827, 874 N.E.2d 654 (2007); *Commonwealth v. Gallant*, 65 Mass.App.Ct. 409, 413, 840 N.E.2d 998 (2006); ... *Arriaga*, *supra* at 386–389, 691 N.E.2d 585.” *Vick*, *supra* at 431, 910 N.E.2d 339. “It bears repeating that, where ... neither crime is a lesser included offense of the other, multiple punishments are permitted *481 even where the offenses arise from the very same criminal event. See *Morey v. Commonwealth*, [*supra*].” *Vick*, *supra* at 436, 910 N.E.2d 339.⁸

Here, the two crimes in question have mutually exclusive elements; specifically, the requirement of scienter distinguishes these two offenses. *Commonwealth v. Ruiz*, 426 Mass. 391, 393 & n.3, 688 N.E.2d 963 (1998).⁹ As such, and under the *Morey* rule, the defendant can be prosecuted for, and convicted of, both offenses simultaneously, even though they arise from the single course of conduct. The convictions of armed assault in a dwelling and of home invasion are not duplicative, and, therefore, the defendant properly is subject to punishment for both offenses.

Judgments affirmed.

All Citations

75 Mass.App.Ct. 472, 914 N.E.2d 969

Footnotes

- 1 The defendant does not appeal his convictions of rape, in violation of G.L. c. 265, § 22(a); and assault and battery, in violation of G.L. c. 265, § 13A.
- 2 After hanging up with the victim, Emerson telephoned the police, alerted them to the situation, and provided the victim's address, in case he telephoned back with an emergency.
- 3 A chemist at the Massachusetts State police crime laboratory analyzed the victim's pants and located several tears on the exterior and the interior crotch area. The chemist testified that the pants were torn in a manner different from normal wear and tear such as when a person sits down and tears her pants.
- 4 The defendant was unable to penetrate the victim with his penis.
- 5 Because the defense counsel did not object to the jury instructions at trial, we examine the alleged error, if any, for whether it created a substantial risk of miscarriage of justice. See *Commonwealth v. Noble*, 429 Mass. 44, 45–47, 707 N.E.2d 819 (1999).
- 6 Even if the instruction were erroneous, as discussed, *supra*, there was ample evidence to warrant the jury's conclusion that the entry was not consented to, and therefore was unlawful. Hence, even if error, the error did not create a substantial risk of a miscarriage of justice.
Regarding entry as relating to armed assault in a dwelling, the judge instructed: "The second element which the Commonwealth must prove beyond a reasonable doubt is that the defendant entered the dwelling. It is not necessary, as I said before, that the entry be complete. It would be sufficient if any part of the defendant's body physically enters the building." The instruction was not error.
- 7 "So long as each offense includes an additional element that the other does not, 'neither crime is a lesser-included offense of the other, and convictions on both are deemed to have been authorized by the Legislature and hence not duplicative.'" *Arriaga*, *supra* at 386, 691 N.E.2d 585, quoting from *Commonwealth v. Jones*, 382 Mass. 387, 393, 416 N.E.2d 502 (1981).
- 8 Discussing cases relied on by the defendant here, including *Commonwealth v. Keohane*, *supra* at 574–575, 829 N.E.2d 1125, the *Vick* court noted, *supra* at 433–434, that "it may appear that our well-established, elements-based approach to analyzing purported duplicative convictions, as first articulated in *Marey*, has been expanded over the years to permit a conduct-based analysis of the facts of a particular case to determine whether a defendant's acts in one criminal event are so closely related as to constitute in substance a single crime such that the defendant can be punished only for the greater offense.... That was not our intention."
- 9 "Both §§ 18A and 18C require the Commonwealth to prove that the defendant was armed with a dangerous weapon at the time of entry into a dwelling house. If the Commonwealth seeks, however, to impose the more severe penalties of § 18C it must establish either that a defendant knew or had reason to know that one or more persons were present within the dwelling house at the time of entry or that the defendant gained such knowledge after entry but nevertheless remained there for some period of time prior to attacking or threatening the person. These scienter requirements distinguish § 18C from § 18A." *Commonwealth v. Ruiz*, *supra* (footnote omitted).

83 Mass.App.Ct. 1115
Unpublished Disposition
NOTICE: THIS IS AN UNPUBLISHED OPINION.
Appeals Court of Massachusetts.

COMMONWEALTH

v.

Steven M. PUTNAM.

No. 12-P-96.

February 26, 2013.

By the Court (GREEN, GRAHAM & SULLIVAN, JJ.).

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

*1 On March 1, 2006, the defendant was convicted by a Superior Court jury of home invasion, armed assault in a dwelling, rape (digital penetration), and assault and battery. On his direct appeal, this court affirmed. See *Commonwealth v. Putnam*, 75 Mass.App.Ct. 472 (2009). The Supreme Judicial Court denied further appellate review. See *Commonwealth v. Putnam*, 455 Mass. 1105 (2009).

On September 14, 2011, the defendant filed a pro se motion for a new trial which was denied by a motion judge who was not the trial judge. On appeal, he argues that the prosecutor engaged in a "pattern of gender discrimination in the selection of the jury"; that the trial judge allowed in evidence improper first complaint testimony; that the trial judge improperly allowed the jury to review a portion of the trial testimony; and that his trial and appellate counsel were ineffective. For substantially the reasons set forth in the brief of the Commonwealth at pages 8 through 31, we affirm. We add the following observations.

Background. In 2004, the defendant, a handyman who occasionally performed work for the victim, a psychiatrist, went to the victim's house, ostensibly seeking help in finding a detoxification program. Once inside the house, the defendant, armed with a knife, grabbed the victim, and after a struggle, while fully clothed, began trying to "hump" her and partially disrobed her. The defendant stopped and ordered the victim to fully disrobe, but, while he was himself disrobing, the victim ran to her neighbor's house, naked from the waist down.

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COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY

Docket Report

Exhibit G

0485CR00666 Commonwealth vs. Putnam, Steven

CASE TYPE: Indictment	FILE DATE: 04/16/2004
ACTION CODE: 265/18C/A-0	CASE TRACK: I - Inventory
DESCRIPTION: HOME INVASION c265 §18C	
CASE DISPOSITION DATE: 05/23/2014	CASE STATUS: Open
CASE DISPOSITION: Disposed by Jury Verdict	STATUS DATE: 04/16/2004
CASE JUDGE:	CASE SESSION: Criminal 1

PARTIES

Prosecutor Commonwealth	Attorney for the Commonwealth 664526 Donna Marie Haran District Attorney's Office District Attorney's Office 225 Main St Worcester, MA 01608 Work Phone (508) 755-8601 Added Date: 10/21/2011
Defendant Putnam, Steven MCI Norfolk P.O. Box 43 Norfolk, MA 02056	Appointed - Indigent Defendant 676543 Merritt Spencer Schnipper Schnipper Hennessy PC Schnipper Hennessy PC 25 Bank Row Suite 2S Greenfield, MA 01301 Work Phone (413) 325-8541 Added Date: 09/25/2017
Other interested party Harvard PD	

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COMMONWEALTH OF MASSACHUSETTS
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Docket Report

EVENTS

Date	Session	Event	Result	Resulting Judge
05/13/2004	Criminal 1	Arraignment	Held as Scheduled	
06/07/2004	Criminal 1	Pre-Trial Conference	Held as Scheduled	
06/21/2004	Criminal 1	Pre-Trial Conference	Held as Scheduled	
06/30/2004	Criminal 1	Pre-Trial Conference	Held as Scheduled	
07/09/2004	Criminal 1	Pre-Trial Conference	Held as Scheduled	
08/04/2004	Criminal 1	Pre-Trial Conference	Held as Scheduled	
08/24/2004	Criminal 1	Pre-Trial Conference	Rescheduled	
10/07/2004	Criminal 1	Pre-Trial Conference	Held as Scheduled	
10/07/2004	Criminal 1	Non-Evidentiary Hearing	Held as Scheduled	
11/08/2004	Criminal 1	Jury Trial	Canceled	
11/08/2004	Criminal 1	Status Review	Held as Scheduled	
11/22/2004	Criminal 1	Pre-Trial Conference	Held as Scheduled	
11/29/2004	Criminal 1	Status Review	Held as Scheduled	
01/31/2005	Criminal 1	Status Review	Held as Scheduled	
03/23/2005	Criminal 1	Pre-Trial Conference	Held as Scheduled	
05/23/2005	Criminal 1	Status Review	Held as Scheduled	
07/28/2005	Criminal 1	Status Review	Held as Scheduled	
09/26/2005	Criminal 1	Status Review	Held as Scheduled	
10/14/2005	Criminal 1	Evidentiary Hearing to Dismiss	Held as Scheduled	
11/16/2005	Criminal 1	Final Pre-Trial Conference	Held as Scheduled	
11/29/2005	Criminal 1	Hearing	Held as Scheduled	
12/08/2005	Criminal 1	Jury Trial	Canceled	
12/08/2005	Criminal 1	Status Review	Held as Scheduled	
01/18/2006	Criminal 1	Final Pre-Trial Conference	Held as Scheduled	
02/24/2006	Criminal 1	Jury Trial	Not Held	
02/27/2006	Criminal 1	Jury Trial	Not Held	
02/27/2006	Criminal 2	Jury Trial	Held as Scheduled	
02/28/2006	Criminal 2	Jury Trial	Held as Scheduled	
03/01/2006	Criminal 2	Jury Trial	Held as Scheduled	
03/03/2006	Criminal 2	Hearing for Sentence Imposition	Held as Scheduled	
11/18/2016	Civil / Criminal Trials	Motion Hearing	Rescheduled	Tucker
11/21/2016	Civil / Criminal Trials	Motion Hearing	Held as Scheduled	Tucker
11/21/2016	Criminal 1	Motion Hearing	Rescheduled	Tucker



12/16/2016	Civil / Criminal Trials	Conference to Review Status	Held as Scheduled	Tucker
02/22/2017	Criminal 2	Conference to Review Status	Rescheduled	Tucker
02/24/2017	Criminal 1	Conference to Review Status	Rescheduled	Tucker
02/24/2017	Criminal 2	Conference to Review Status	Not Held	Tucker
03/10/2017	Criminal 2	Conference to Review Status	Held as Scheduled	Tucker
04/27/2017	Criminal 2	Conference to Review Status	Not Held	Tucker
04/27/2017	Civil / Criminal Trials	Conference to Review Status	Held as Scheduled	Tucker
06/09/2017	Civil / Criminal Trials	Conference to Review Status	Held as Scheduled	Tucker
07/07/2017	Criminal 2	Conference to Review Status	Held as Scheduled	Tucker
08/11/2017	Criminal 2	Conference to Review Status	Rescheduled	Tucker
12/11/2017	Criminal 2	Conference to Review Status	Held as Scheduled	Tucker
03/09/2018	Criminal 1	Motion Hearing	Held as Scheduled	Wrenn
05/14/2018	Criminal 1	Motion Hearing	Held as Scheduled	Kenton-Walker

FINANCIAL DETAILS

Date	Fees/Fines/Costs/Charge	Assessed	Paid	Dismissed	Balance
05/13/2004	Legal counsel fee assessed: \$150.00	0.00	0.00	0.00	0.00
Total		0.00	0.00	0.00	0.00

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**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

INFORMATIONAL DOCKET ENTRIES

Date	Ref	Description	Judge
04/16/2004	1	Indictment returned	
05/13/2004		Deft arraigned before Court (Fecteau, J)	
05/13/2004		Bail set: \$1,000,000.00 surety or \$100,000.00 cash with out prejudice	
05/13/2004		Committee for Public Counsel Services appointed, pursuant to Rule 53	
05/13/2004		RE Offense 1:Plea of not guilty	
05/13/2004		RE Offense 2:Plea of not guilty	
05/13/2004		RE Offense 3:Plea of not guilty	
05/13/2004		RE Offense-4:Plea of not guilty	
08/24/2004	2	Pre-trial conference report filed --Approved by Court, (Fahey, Justice)	
08/24/2004	3	Motion by Deft: For Discovery--ALLOWED by Agreement (Fahey, Justice)	
10/05/2004		Hospital records from Emerson Hospital Concord, MA 01742 received #17991 (Counsel may view only - no copies)- Fishman, J.	
10/07/2004		Appointment of Counsel Robert A Delle, pursuant to Rule 53	
10/07/2004	4	Motion by Commonwealth: Commonwealth's Response to Defendant's Motion for Discovery	
10/07/2004	5	Motion by Commonwealth: For Reciprocal Discovery	
10/07/2004	6	Motion and Affidavit to Withdraw as Counsel ---ALLOWED (Fishman, Justice)	
09/26/2005	7	Motion by Deft: Motion to Dismiss with Affidavit in Support of	
10/14/2005		Hearing on (P#7 - Motion to Dismiss) held, matter taken under advisement (Kern, J.)	
10/14/2005	8	Commonwealth files Opposition and Memorandum of Law in Response to the Defendant's Motion to Dismiss Indictment	
10/17/2005		Motion (P#7) Denied Pages 12-13 of the Grand Jury Minutes indicate that the alleged victim was unaware at the time she allowed the defendant to enter her home, that he had a knife. See Commonwealth v Mahar, 430 Mass 643,652 (2000). The evidence presented to the Grand Jury was sufficient. Comm v McCarthy, 365 Mass 160 (1982) (Kern, Justice). Copies mailed to DA and Atty	
11/16/2005	9	Commonwealth files Joint Pretrial Memorandum -(APPROVED) (McIntyre, J)	
11/16/2005	10	Commonwealth files Certificate of Compliance -(APPROVED)(McIntyre, J)	
11/29/2005	11	Dis-Appearance of Deft's Atty: Robert A Delle	
12/21/2005	12	Commonwealth files List of Expert Witnesses	
01/18/2006	13	Commonwealth files Pre-Trial Memorandum	
02/27/2006	14	Motion by Deft: For Voir Dire Questions and Individual Voir Dire	
02/27/2006	15	Motion by Deft: In Limine -(DENIED)(Fecteau, J)	



COMMONWEALTH OF MASSACHUSETTS
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02/27/2006	16	Commonwealth files and Defendant files Stipulation Regarding Evidence found in Defendant's House
02/27/2006	17	Motion by Deft: To Sequester -(ALLOWED by Agreement) (Fecteau, J)
02/27/2006		Exhibits recieved and are located up in attic wall
02/28/2006	18	Motion by Deft: For Requiring finding of not Guilty at Close of Evidence -(DENIED) (Fecteau, J)
02/28/2006	19	Motion by Deft: For Jury Instructions
02/28/2006	20	Motion by Deft: For Requied Finding of not Guilty at Close of Commonwealth Case -(DENIED After Hearing) (Fecteau, J)
03/01/2006		RE Offense 1:Guilty verdict
03/01/2006		RE Offense 2:Guilty verdict
03/01/2006		RE Offense 3:Guilty verdict (lesser offense) Rape 265/22(a)
03/01/2006		RE Offense 4:Guilty verdict
03/03/2006		Defendant sentenced to Offense #1) Twenty(20) to Twenty Five(25) years Cedar Junction/ Offense #2 Twenty(20) to Twenty Five years Cedar Junction concurrent with 04-666(1)/ Offense #3 Eighteen(18) to Twenty(20) years Cedar Junction concurrent with 04-666(1)/ Offense #4 Probation Five(5) years from + after sentence imposed on 04-666(1) (Fecteau,Justice)
03/03/2006	21	By Defendant Counsel to Withdraw -(ALLOWED with exception of any representation before thw Superior Court Appellate Division (Fecteau, J)
03/03/2006	22	Motion by Deft: For Appointment of Appellate Counsel (Allowed) (Fecteau, J)
03/03/2006	23	Motion by Deft: For Judgement not withstanding the Verdict (Denied) (Fecteau, J)
03/03/2006	24	Notified of right of appeal under Rule 64
03/03/2006		Defendant is subject to the following special conditions: Mental Health Evaluation Treatment, Drug and Alcohol Evaluation Treament, Sex Offender Treatment at Direction of P.D. Stay Away + No Contact with Victim or Witness (Fecteau, J)
03/03/2006		Sentence credit given as per 279:33A: 767 days (Fecteau, J)
03/03/2006		Sentence stayed until 3/6/2006 (Fecteau, J)
03/03/2006		Victim-witness fee assessed: \$90.00 (Fecteau, J)
03/03/2006		Probation supervision fee assessed: \$65.00 (Fecteau, J)
03/03/2006	25	NOTICE of APPEAL FILED by Steven M Putnam
03/06/2006	26	Court Reporter Pender, Claire is hereby notified to prepare one copy of the transcript of the Non Evidentiary Counsel of 10/7/04 Before Judge Fishman
03/06/2006	27	Court Reporter Kaye, Judith is hereby notified to prepare one copy of the transcript of the Evidentiary Dismiss of 10/14/2005, Before Judge Kern.

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COMMONWEALTH OF MASSACHUSETTS
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03/06/2006	28	Court Reporter Witaszek, Jennifer is hereby notified to prepare one copy of the transcript of the Trial of 2/27/06, 2/28/2006, 3/1/06, and 3/3/06 Before Judge Fecteau
03/10/2006	29	Notice of appeal from sentence to Cedar Junction MCI (Walpole) filed by Steven M Putnam
03/10/2006	30	Letter transmitted to the Appellate Division. All parties notified 3/10/2006
03/20/2006	31	Motion by Deft: For Appointment of Appellate Counsel with Affidavit of Indigency
03/20/2006	32	NOTICE of APPEAL FILED by Steven M Putnam (See Paper #25)
03/20/2006	33	Motion by Deft: For Leave to File Late Appeal from Sentence with Affidavit in Support of
03/20/2006		Motion (P#31) Previously Allowed see Docket Entry of 3/3/06 on P#22 (Fecteau, J). Copies mailed 3/21/2006 to defendant
03/20/2006	34	Regarding P#33 - Notice of Sentence Appeal has already been docketed. See entry of 3/10/06 on P#29 (Fecteau, J)
03/23/2006		Victim-witness fee paid as assessed \$90.00
03/27/2006	35	Motion by Deft: For Appointment of Appellate Counsel with Affidavit of Indigency
03/27/2006	36	Motion by Deft: To Waive Fee's with Affidavit of Indigency
03/28/2006		Regarding P#35 - No Action Necessary as it was Previously Allowed (Fecteau, J)
03/28/2006		Motion (P#36) Denied for Insufficient Evidence of Hardship (Fecteau, J). Copies mailed
04/04/2006	37	Motion by Deft: To Waive Fees (Victim Witness & Appointment of Counsel)
04/06/2006		Motion (P#37) Denied for insufficient cause stated, since indigency is not sufficient to support a finding of severe hardship (Fecteau, Justice). Copies mailed to defendant
04/11/2006	38	Motion by Deft: For Free Transcripts of Trial for Appeal
04/11/2006		Regarding P#38 Copies of transcripts will be provided the appellate counsel of the defendant without a charge, once he or she is appointed (Fecteau, J)
05/02/2006	31	Appointment of Counsel Edward B Fogarty, pursuant to Rule 53 (For Direct Appeal)
05/02/2006	39	Defendant files motion to revise and revoke sentence with affidavit in support of
05/03/2006		Copy of Motion to Revise and Revoke sent to Judge Fecteau in Springfield (Hampden Superior)
05/23/2006	40	Motion by Deft: Motion to Dismiss Appointed Counsel and to Appoint New Counsel



COMMONWEALTH OF MASSACHUSETTS

WORCESTER COUNTY

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05/30/2006		Copy of P#40 Sent to Judge Fecteau in Springfield (Hampden Superior Court)
06/09/2006		Motion (P#40) The issue involved in a sentence appeal, as in a motion to revise and revoke a sentence are narrow and discreet issues and that trial counsel is in the best position to represent the defendant at both proceedings. I decline to appoint other counsel for these hearings; if any (Fecteau, Justice). Copies mailed to defendant and atty
07/07/2006		Transcript of testimony received One(1) volume from court reporter, Pender, Claire of Motion to Withdraw on October 7, 2004
07/31/2006		Transcript of testimony received One(1) volume of Transcript of Proceedings on October 14, 2005 from court reporter, Kaye, Judith
10/19/2006	41	MOTION by Deft: For Reconsideration of Appointment of Counsel for Sentence Appeal -(ALLOWED)(Agnes, J)
12/01/2006	42	Committee for Public Counsel Services appointed, pursuant to Rule 53 -(David Keighley -Direct Appeal
12/05/2006	43	Appearance of Deft's Atty: David Keighley
01/25/2007	44	MOTION by Deft: For all Crime Scene Photos Relating to Case
04/23/2007		Transcript of testimony received One volume of each 2/27/2006 Jury Trial, 2/28/06 Jury Trial, 3/1/06 Jury Trial, 3/3/06 Sentencing from court reporter, Witaszek Jennifer
06/14/2007	45	Statement of the case on Appeal (Cover Sheet)
06/14/2007	46	Notice of assembly of record; mailed to Appeals Court per Rule 9(d)
06/14/2007		Notice of completion of assembly of record sent to clerk of Appeals Court and attorneys for the Commonwealth and defendant.
06/21/2007	47	Re: No.2007-P-0958. Notice of Entry. In accordance with Massachusetts Rule of Appellate Procedure 10(a)(3), please note that the above-referenced case was entered in this Court on 6/19/07
07/06/2007	48	Appointment of Counsel Julie Ann Boyden, pursuant to Rule 53 (For Direct Appeal)
01/14/2008	49	Re: No 2007-P-0958 - Notice of Docket Entry - Please take note that with respect to the Motion to stay the proceedings, filed by Steven M. Putnam, On January 10, 2008 the following order was entered on the docket of the above-reference case: RE#9: Appellate is granted leave to file motion for new trial in the trial court. Appellate proceedings stayed to 2/11/08. Status report to b filed on or before that date supported by affidavit of counsel that a motion has been filed in the trial court.
07/02/2008	50	Sentence Appeal: Withdrawn by Steven M Putnam
07/29/2008	51	Appearance of Deft's Atty: Debra S Krupp

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**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

09/03/2008	52	Re: No. 2007-P-0958- Notice of Entry -Please take note that, with respect to the Motion to reinstate the appeal filed by Steve M Putnam(Paper #12) on September 2, 2008, the following order was entered on the docket of the above-referenced case; Revise Action Re#12: the motion to reinstated appeal is allowed and appeal is reinstated this date. Proceeding stayed to 9/30/08. Status report to be filed on or before that date as to how defendant wishes to proceed. (Cypher, Kantrowitz & Wolohjian, JJ)
01/13/2009		Copy of P#39 sent to Atty per request
12/09/2009	53	Rescript received from Appeals Court; judgment AFFIRMED
02/02/2010	54	Defendant files MOTION to revise and revoke sentence with affidavit in support of (doesn't request hearing yet)
03/16/2010	55	Appearance of Deft's Atty: David Rotondo
06/06/2011	56	MOTION by Deft: To Preserve Evidence of Official Records and Trial Exhibits (Sent to Judge Agnes)
06/07/2011	57	Re: P#56 - The office of the DA shall have until June 24, 2011 to respond in writing if opposes the motion. Meanwhile any trial exhibits in this case shall be returned by the Clerk (Agnes, J)
09/14/2011	58	Defendant's motion for new trial (Sent to Lemire, J)
09/16/2011		MOTION (P#58) This motion is assigned to Judge Kenton-Walker (James R. Lemire, Justice).
09/20/2011		MOTION (P#58) Commonwealth is given 30 days to file any response (Kenton-Walker, Justice). Copies mailed 9/21/2011
10/21/2011	59	Commonwealth files Memorandum in Opposition to Defendant's Motion for a New Trial
11/22/2011		MOTION (P#58) Denied (Janet Kenton-Walker, Justice). Copies mailed
11/22/2011	60	MEMORANDUM OF DECISION & ORDER ON DEFENDANT'S MOTION FOR NEW TRIAL: For the foregoing reasons, the defendant's Motion for New Trial, in all respects, DENIED 11/22/2011, (Janet Kenton-Walker, Justice)
12/22/2011	61	NOTICE of MOTION APPEAL FILED by Steven M Putnam
01/20/2012	62	Statement of the case on Appeal (Cover Sheet)
01/20/2012	63	Notice of assembly of record; mailed to Appeals Court per Rule 9(d)
01/20/2012		Notice of completion of assembly of record sent to clerk of Appeals Court and attorneys for the Commonwealth and defendant.
01/26/2012	64	Notice of Entry of appeal received from the Appeals Court
05/13/2013	65	Rescript received from Appeals Court; judgment AFFIRMED Order Denying Motion for New Trial Affirmed (Stanton, Clerk)
02/07/2014	67	MOTION by Deft: (pro-se)Pursuant to GL 278A sec 3: Post Conviction Access to Forensic and Scientific Analysis with "facts" and GJ Minutes in support of (sent to Judge Lemire 3/7/14)
02/28/2014	66	MOTION by Deft: (pro-se) for New Trial ..with Memorandum in Support of



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03/07/2014	68	ORDERED: ORDER in RE:(p#66) Defendant's Motion for New Trial- the Defendant, Steven Putnam, has filed a Motion for a new trial under Mass. Rules of Criminal Procedure 30(b). The District Attorney shall file any response in writing on or before April 11, 2014. Because the trial Judge is not available to hear this matter, the case is assigned to Judge David Ricciardone for any action he may deem appropriate. (Lemire, J, (RAJ)) copies mailed to DA and Defendant 3/10/14	
03/14/2014		ORDERED:(RE:p#67) Commonwealth shall have until 4/15/14 to file any opposition (James R. Lemire, RAJ) copies mailed 3/14/15	
04/04/2014	69	Commonwealth files Memorandum in Opposition to Defendant's Second Motion for a New Trial	
04/04/2014	70	Commonwealth files Memorandum in Opposition to Defendant's Post Conviction Motion for Scientific/Forensic Analysis	
04/24/2014		MOTION (P#66) Denied. The fact that the defendant ignores the evidence of the digital penetration presented to the jury (trial transcript pp. 1-196, 1-216-219) does not negate its existence. There was no injustice. Accordingly, this motion is DENIED without a hearing (Ricciardone, J). Copies mailed to DA & Atty	
04/24/2014	71	MEMORANDUM OF DECISION AND ORDER ON MOTION FOR FORENSIC AND SCIENTIFIC ANALYSIS (P. #67): Therefore, this motion does not meet the requirements of the statute and is DISMISSED without a hearing G/L/c 278A 3(e)(James R. Lemire, RAJ) copies mailed to DA & Defendant	
05/09/2014	72	NOTICE of Motion APPEAL FILED by Steven M Putnam	
05/09/2014	73	Statement of the case on Appeal (Cover Sheet)	
05/09/2014	74	Notice of assembly of record; mailed to Appeals Court per Rule 9(d)	
05/09/2014		Notice of completion of assembly of record sent to clerk of Appeals Court and attorneys for the Commonwealth and defendant.	
05/23/2014	75	Notice of Entry of appeal received from the Appeals Court	
10/02/2015	76	Defendant's Motion for New Trial and Affidavit (Given to Judge Tucker)	
10/07/2015	77	ORDER: in re: Deft's Motion for New Trial Because the trial judge is not available to hear this matter, the case is assigned to Judge Shannon Frison for any action she may deem appropriate. (Case given to Judge Frison)	Tucker
12/11/2015		Endorsement on Motion for New Trial, (#76.0): DENIED After review, this motion is DENIED; See accompanying Memorandum of Decision.	Frison
12/11/2015		The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Steven Putnam Attorney: Donna Marie Haran, Esq. Holding Institution: MCI - Cedar Junction (at Walpole)	



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12/11/2015	78	MEMORANDUM & ORDER:	Frison
		For the foregoing reasons, it is hereby ORDERED that the defendant's Motion for New Trial is DENIED.	
12/28/2015	79	Notice of appeal filed (Motion for New Trial, Judge Frison)	
		Applies To: Putnam, Steven (Defendant)	
04/06/2016	80	Statement of Case Appeal filed:	
04/06/2016	81	Appeal: notice of assembly of record	
04/11/2016	82	Notice of Entry of appeal received from the Appeals Court	
05/18/2016	83	Rescript received from Appeals Court; judgment AFFIRMED Order denying the motion for new trial affirmed.	
07/25/2016	84	Defendant's Motion for Post Conviction Access to Forensic and Scientific Analysis; Affidavit in Support	
08/02/2016	85	ORDER: re: Deft's Motion for Post-Conviction Access to Forensic and Scientific Analysis ...Because the trial judge is not available to hear this matter, the case is assigned to Judge Richard T. Tucker for any action he may deem appropriate.	Tucker
08/02/2016	86	ORDER: re: Motion for Post Conviction Access to Forensic and Scientific Analysis ...if the Commonwealth wishes to respond to this motion addressing the sole issue of whether the motion meets the requirements under G. L. c.278A, s3(e), the Commonwealth shall do so within 10 days of this Order. If the Commonwealth does not intend to file a response at this stage, Asst. Clerk, Gail Dempsey should be notified. So Ordered.	Tucker
08/02/2016		The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Steven Putnam Attorney: Donna Marie Haran, Esq. Holding Institution: MCI - Cedar Junction (at Walpole)	
09/06/2016	87	ORDER: on Defendant's Motion for Post-Conviction Access to Forensic and Scientific Analysis Commonwealth has 60 days to respond.	Tucker
09/08/2016		The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Steven Putnam Attorney: Donna Marie Haran, Esq. Holding Institution: MCI - Cedar Junction (at Walpole)	
10/05/2016	88	Opposition to Defendant's Motion for Post-Conviction Forensic Analysis (p#84) filed by Commonwealth	
10/14/2016	89	Pro Se Defendant's Motion for Appointment of Counsel with Affidavit of Indigency	



10/17/2016	The following form was generated: Notice to Appear Sent On: 10/17/2016 08:36:36	
10/17/2016	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 11/18/2016 09:00 AM Motion Hearing.	
10/17/2016	Endorsement on Motion for Post Conviction Access to Forensic and Scientific Analysis, (#84.0): Other action taken The Commonwealth having filed its written response, a hearing under G.L. 278A, §6 shall be held on November 18, 2016 in Courtroom 19 at 9:00AM. (endorsement written on Order, p#87)	Tucker
10/17/2016	The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Steven Putnam Attorney: Donna Marie Haran, Esq. Holding Institution: MCI - Norfolk	
10/18/2016	Endorsement on Motion for Appointment of Counsel, (#89.0): Other action taken This motion shall be referred to CPCS for its review.	Tucker
11/08/2016	Event Result: The following event: Motion Hearing scheduled for 11/18/2016 09:00 AM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date	Tucker
11/08/2016	The following form was generated: Notice to Appear Sent On: 11/08/2016 09:36:57	
11/08/2016	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 11/21/2016 11:00 AM Motion Hearing. Please cancel habe scheduled for 11/18/16	
11/08/2016	The following form was generated: Notice to Appear Sent On: 11/08/2016 09:40:43	
11/21/2016	Event Result: The following event: Motion Hearing scheduled for 11/21/2016 11:00 AM has been resulted as follows: Result: Rescheduled Reason: Transferred to another session	Tucker
11/21/2016	The following form was generated: Notice to Appear Sent On: 11/21/2016 11:52:21	

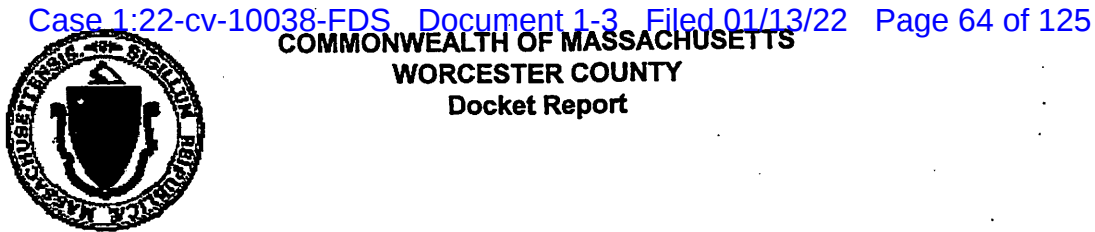


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11/21/2016		Event Result: The following event: Motion Hearing scheduled for 11/21/2016 09:00 AM has been resulted as follows: Result: Held as Scheduled Court Reporter Susan Garvin	Tucker
11/21/2016		Habeas Corpus for defendant issued to MCI - Norfolk returnable for 12/16/2016 09:00 AM Conference to Review Status.	
12/16/2016		Event Result: The following event: Conference to Review Status scheduled for 12/16/2016 09:00 AM has been resulted as follows: Result: Held as Scheduled	Tucker
12/16/2016	90	Defendant's Supplemental Motion for post-conviction testing	Tucker
01/17/2017	91	General correspondence regarding Letter from CPCS -After reviewing the Defendant's motion, his case, and other related materials, CPCS has decided not to appoint counsel for litigation under Chapter 278A in the Defendant's matter.	
02/22/2017		Event Result: The following event: Conference to Review Status scheduled for 02/22/2017 09:00 AM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date	Tucker
02/23/2017		Event Result: The following event: Conference to Review Status scheduled for 02/24/2017 09:00 AM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date	Tucker
02/24/2017		Event Result: The following event: Conference to Review Status scheduled for 02/24/2017 09:00 AM has been resulted as follows: Result: Not Held Reason: Defendant not transported to event	Tucker
02/24/2017		Habeas Corpus for defendant issued to MCI - Norfolk returnable for 03/10/2017 10:00 AM Conference to Review Status.	
03/10/2017		Event Result: The following event: Conference to Review Status scheduled for 03/10/2017 10:00 AM has been resulted as follows: Result: Held as Scheduled	Tucker
03/10/2017		Habeas Corpus for defendant issued to MCI - Norfolk returnable for 04/27/2017 10:00 AM Conference to Review Status.	
04/24/2017	92	Rescript received from Appeals Court; judgment REVERSED The order denying the motion for a new trial is vacated, and the motion is to be treated as not acted upon and awaiting determination by the Superior Court. -Copy of rescript sent to Judge Tucker on 4/24/17	



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04/27/2017		Event Result: The following event: Conference to Review Status scheduled for 04/27/2017 10:00 AM has been resulted as follows: Result: Not Held Reason: Transferred to another session	Tucker
04/27/2017		Event Result: The following event: Conference to Review Status scheduled for 04/27/2017 10:00 AM has been resulted as follows: Result: Held as Scheduled	Tucker
04/27/2017		Habeas Corpus for defendant issued to MCI - Norfolk returnable for 06/09/2017 09:00 AM Conference to Review Status.	
05/11/2017	93	Pro Se Defendant 's Motion for Post-Conviction relief pursuant to Superior Court Rule 61A	
05/26/2017	94	Pro Se Defendant 's Motion for the Appointment of Counsel, or, in the alternative to Compel the Commonwealth to Test the Biologicals Pursuant to Chapter 278A	
06/09/2017		Event Result: The following event: Conference to Review Status scheduled for 06/09/2017 09:00 AM has been resulted as follows: Result: Held as Scheduled FTR Room 19	Tucker
06/09/2017		Habeas Corpus for defendant issued to MCI - Norfolk returnable for 07/07/2017 09:00 AM Conference to Review Status.	
06/13/2017	95	ORDER: Defendant's Motion for New Trial It is hereby ORDERED that the Defendant's motion for new trial is DENIED	Frison
06/13/2017		The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Steven Putnam Attorney: Donna Marie Haran, Esq.	
06/13/2017	96	Pro Se Defendant 's Motion to Revise and Revoke	
06/13/2017	96.1	Affidavit filed by Defendant Steven Putnam in support of Motion to Revise and Revoke	
06/28/2017	97	Notice of appeal filed. Motion for New Trial DENIED (Frison, J)	
		Applies To: Putnam, Steven (Defendant)	
07/07/2017		Event Result: The following event: Conference to Review Status scheduled for 07/07/2017 09:00 AM has been resulted as follows: Result: Held as Scheduled FTR Room 10	Tucker
07/07/2017		Habeas Corpus for defendant issued to MCI - Norfolk returnable for 08/11/2017 09:00 AM Conference to Review Status.	

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08/10/2017		Event Result: The following event: Conference to Review Status scheduled for 08/11/2017 09:00 AM has been resulted as follows: Result: Rescheduled Reason: Court Order	Tucker
09/25/2017		Attorney appearance On this date Merritt Spencer Schnipper, Esq. added as Appointed - Indigent Defendant for Defendant Steven Putnam Appointment made for the purpose of Motion for a new Trial by Judge Hon. Janet Kenton-Walker.	
12/11/2017		Event Result: Judge: Tucker, Hon. Richard T The following event: Conference to Review Status scheduled for 12/11/2017 09:00 AM has been resulted as follows: Result: Held as Scheduled Staff Appeared: Court Reporter Witaszek, Jennifer M	Tucker
12/11/2017	98	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 03/09/2018 09:00 AM Motion Hearing.	
02/05/2018	99	Defendant Merritt Spencer Schnipper, Esq.'s Motion to Stay and Status Report	
03/09/2018		Event Result: Judge: Wrenn, Hon. Daniel M The following event: Motion Hearing scheduled for 03/09/2018 09:00 AM has been resulted as follows: Result: Held as Scheduled	Wrenn
03/09/2018		The following form was generated: Notice to Appear Sent On: 03/09/2018 11:33:07	
03/09/2018	100	Habeas Corpus for defendant issued to MCI - Norfolk returnable for 05/14/2018 09:00 AM Motion Hearing. Judge: Wrenn, Hon. Daniel M	Wrenn
03/09/2018		Endorsement on Motion to Stay Proceedings and Status Report, (#99.0): DENIED without prejudice Judge: Wrenn, Hon. Daniel M	Wrenn
04/25/2018	101	Defendant's Motion for Discovery pursuant to G.L. c 278, §3(c)	
04/25/2018	102	Steven Putnam's Memorandum in support of Previously Filed Pro-Se Motion for Forensic Testing pursuant to G.L. c 278A (Supplemental)	
05/07/2018	103	Defendant's Motion to Withdraw Habeas Corpus (JKW)	
05/07/2018	103.1	Affidavit filed by Defendant Steven Putnam in support of Motion to Withdraw Habeas Corpus	

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05/08/2018		Endorsement on Motion to Withdraw Habeas Corpus Issued to MCI Norfolk, (#103.0): ALLOWED	Kenton-Walker
		Judge: Kenton-Walker, Hon. Janet	
05/10/2018		The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Merritt Spencer Schnipper, Esq. Attorney: Donna Marie Haran, Esq.	
05/11/2018	104	Commonwealth 's' Response to Defendant's Supplemental Memorandum in Support of His Previous Pro-Se Motion for Post-Conviction Forensic Testing and Motion for Discovery	
05/14/2018		Matter taken under advisement Judge: Kenton-Walker, Hon. Janet The following event: Motion Hearing scheduled for 05/14/2018 09:00 AM has been resulted as follows: Result: Held - Under advisement	Kenton-Walker
05/29/2018		Endorsement on Motion for Post-Conviction Access to Forensic and Scientific Analysis, (#84.0): DENIED After thorough review of the respective pleadings, the history of this case - particularly post-conviction motions and decisions- and following a hearing and review of the relevant law, the defendant's motion is DENIED. The defendant's motion and affidavits do not meet the requirements of c. 278A, §3(b)(4) in that defendant has not met his burden to show whether any test results could be material to the question of identity of the perpetrator. Here the issue is not identity, but whether a crime occurred. Defendant is not entitled to relief. For these reasons and as stated in Commonwealth's memo the defendant's motion is DENIED.	Kenton-Walker
		Judge: Kenton-Walker, Hon. Janet	
05/29/2018	105	Pro Se Defendant 's' Motion for Finding of Fact and Rulings of Law (re: Motion to Revise and Revoke 6/7/17; p#)	Kenton-Walker
		Judge: Kenton-Walker, Hon. Janet	
05/30/2018		The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Merritt Spencer Schnipper, Esq. Holding Institution: MCI - Norfolk	
05/31/2018		Endorsement on Motion for Findings of Fact and Rulings of Law, (#105.0): DENIED as the motion was not timely filed. See pleading #96	Kenton-Walker
		Judge: Kenton-Walker, Hon. Janet	
05/31/2018		Endorsement on Motion to Revise and Revoke, (#96.0): DENIED This motion is not timely filed.	Kenton-Walker
		Judge: Kenton-Walker, Hon. Janet	

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06/01/2018		The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Steven Putnam
06/01/2018		The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Steven Putnam
06/04/2018	106	Notice of appeal filed. On the Court's May 29, 2018 Order Denying his Motion for a Forensic Testing Pursuant to G.L. c278 3 May 31, 2018 Applies To: Putnam, Steven (Defendant)
06/07/2018	107	Appeal: Statement of the Case on Appeal (Cover Sheet).
06/07/2018		Notice to Clerk of the Appeals Court of Assembly of Record
06/07/2018	108	Appeal: notice of assembly of record sent to Counsel Applies To: Putnam, Steven (Defendant)
06/18/2018	109	Defendant's Motion for Reconsideration with Supplemental Motion to Revise and Revoke Sentence (Judge Kenton-Walker)
06/25/2018		Endorsement on Motion for Reconsideration with Supplemental Motion to Revise and Revoke, (#109.0): Other action taken Commonwealth has 60 days to file a responsive pleading. Judge: Kenton-Walker, Hon. Janet
06/26/2018		The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Merritt Spencer Schnipper, Esq. Attorney: Donna Marie Haran, Esq.
07/09/2018	110	Opposition to Defendant's Motion for Reconsideration with Supplemental Motion to Revise and Revoke filed by Commonwealthre p#109
07/11/2018		Endorsement on Motion for Reconsideration with Supplemental Motion to Revise and Revoke, (#109.0): DENIED After review of the record in this case, the defendant's motion is DENIED for the reasons stated in the Commonwealth's opposition. Judge: Kenton-Walker, Hon. Janet
07/13/2018		The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Steven Putnam
09/17/2018	111	Notice of docket entry received from Appeals Court Re: no. 2018-P-844 The Supreme Judicial Court has allowed an Application for Direct Appellate Review of the above-referenced matter. Case transferred to the Supreme Judicial Court
09/19/2018	112	Appeal entered in Supreme Judicial Court on 09/17/2018 docket number Re: No SJC-12596



**COMMONWEALTH OF MASSACHUSETTS
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05/09/2019	113	Rescript received from Supreme Judicial Court; judgment REVERSED The order denying the defendant's chapter 278A motion is reversed, and this case is remanded to the Superior Court for further proceeding consistent with this opinion and the reasoning in Commonwealth v William published today. 4/9/19 (Kenneally, Clerk)	
05/28/2019	114	Defendant 's Motion for Discovery (Renewed) pursuant to c.278A §3(c) (JKW)	
06/25/2019		Endorsement on Motion for Discovery (Renewed) pursuant to G.L. c278, §3(c), (#114.0): No Action Taken It does not appear that counsel has served the Commonwealth with this renewed motion. No action taken until service made.	Kenton-Walker
06/26/2019		The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Merritt Spencer Schnipper, Esq: Prosecutor: Commonwealth	
07/08/2019	115	Defendant 's Certificate of Service of Renewed Motion for Discovery pursuant to GL c278, §3(c) (JKW)	
07/01/2020	116	General correspondence regarding Pro-Se Defendant Requested Copies of P#89 & P#91 Requested Copies sent to Defendant at MCI-Norfolk	
09/11/2020	117	Pro Se Defendant 's Motion for the transcript of the June 9, 2017 and July 7, 2017 hearings *given to clerk in 1st session*	
09/15/2020	118	Affidavit of Steven Putnam Affidavit of indigency *document impounded*	
12/02/2020		Docket Note: Docket sheet mailed to defendant 12/2/2020	
02/08/2021	119	Pro Se Defendant 's Motion for Contempt of Court (Verified) *Given to Clerk ML on 02/11/21	
02/12/2021		Endorsement on Motion for Contempt of Court (Verified), (#119.0): Other action taken Commonwealth shall have 60 days to respond.	Wrenn
02/12/2021		The following form was generated: A Clerk's Notice was generated and sent to: Prosecutor, Attorney: Donna Marie Haran, Esq. District Attorney's Office 225 Main St, Worcester, MA 01608	
02/12/2021		The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Steven Putnam MCI Norfolk P.O. Box 43, Norfolk, MA 02056	
03/24/2021	120	General correspondence regarding response from Attorney Donna Marie Haran from Worcester DA's office responding to "defendant's pro-se verified motion for contempt of court"	
03/29/2021	121	Pro Se Defendant 's Motion to Revise and Revoke Sentence	

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COMMONWEALTH OF MASSACHUSETTS
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03/29/2021	121.1	Affidavit filed by Defendant Steven Putnam in support of Motion to Revise and Revoke Sentence	
03/31/2021		Endorsement on Motion to Revoke and Revise Sentence, (#121.0): DENIED DENIED, this motion is untimely. CPCS is directed to screen this matter for appointment of an attorney to follow-up based on the ruling in Comm v. Putnam No. SJC - 12596	Reardon
04/01/2021		The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Steven Putnam MCI Norfolk P.O. Box 43, Norfolk, MA 02056 Prosecutor, Attorney: Donna Marie Haran, Esq. District Attorney's Office 225 Main St, Worcester, MA 01608	
04/16/2021	122	Pro Se Defendant 's Motion for reconsideration (verified)	
04/26/2021		Endorsement on Motion for reconsideration , (#122.0): DENIED This motion is DENIED. It presents no significant new information. The defendant reliance on Commonwealth vs Fenton F 442 Mass (2004) is inapplicable, as his Rule 29 motion has repeatedly been Denied as untimely. As shown by the defendant's Exhibit A & B. The previous order for CPCS to screen the c278A issues, pursuant to the ruling in Commonwealth vs Putnam 481 Mass 1045(2019) remains in effect.	Reardon
		Judge: Reardon, Jr., Hon. James G	
04/26/2021	123	Defendant 's Motion for the court to compel the Commonwealth to Conduct Forensic Testing. exhibits appended to pleading.	
		Sent to Judge Reardon	
04/27/2021		The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Merritt Spencer Schnipper, Esq. Schnipper Hennessy PC 25 Bank Row Suite 2S, Greenfield, MA 01301 Prosecutor, Attorney: Donna Marie Haran, Esq. District Attorney's Office 225 Main St, Worcester, MA 01608 Holding Institution: MCI - Norfolk 2 Clark Street PO Box 43, Norfolk, MA 02056	
04/27/2021		The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Steven Putnam MCI Norfolk P.O. Box 43, Norfolk, MA 02056 Holding Institution: MCI - Norfolk 2 Clark Street PO Box 43, Norfolk, MA 02056	
05/03/2021		Endorsement on , (#123.0): Defendant 's Motion for the court to compel the Commonwealth to Conduct Forensic Testing. exhibits appended to pleading.	Reardon
		The Commonwealth shall have 30 days to respond	



**COMMONWEALTH OF MASSACHUSETTS
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05/04/2021

The following form was generated:

A Clerk's Notice was generated and sent to:

Defendant, Attorney: Merritt Spencer Schnipper, Esq. Schnipper Hennessy

PC 25 Bank Row Suite 2S, Greenfield, MA 01301

Prosecutor, Attorney: Donna Marie Haran, Esq. District Attorney's Office 225

Main St, Worcester, MA 01608

05/24/2021

124

Notice of appeal filed.

Applies To: Putnam, Steven (Defendant)

05/26/2021

125

Defendant's Motion to Respond to Defendant's Motion for Court to Compel the Commonwealth to Conduct Forensic Testing after Counsel has been Appointed, and has filed an amended or supplemental motion or decline to do so

Sent to Judge Reardon

05/26/2021

Endorsement on Motion to Commonwealth's Motion to Respond to Defendant's Motion for Court to Compel the Commonwealth to Conduct Forensic Testing after Counsel has been Appointed, and has filed an amended or supplemental motion or decline to do so. (#125.0): ALLOWED

Reardon

05/28/2021

The following form was generated:

A Clerk's Notice was generated and sent to:

Defendant: Steven Putnam MCI Norfolk P.O. Box 43, Norfolk, MA 02056

Defendant, Attorney: Merritt Spencer Schnipper, Esq. Schnipper Hennessy

PC 25 Bank Row Suite 2S, Greenfield, MA 01301

Holding Institution: MCI - Norfolk 2 Clark Street PO Box 43, Norfolk, MA 02056

05/28/2021

The following form was generated:

A Clerk's Notice was generated and sent to:

Defendant: Steven Putnam MCI Norfolk P.O. Box 43, Norfolk, MA 02056

Defendant, Attorney: Merritt Spencer Schnipper, Esq. Schnipper Hennessy

PC 25 Bank Row Suite 2S, Greenfield, MA 01301

Prosecutor, Attorney: Donna Marie Haran, Esq. District Attorney's Office 225

Main St, Worcester, MA 01608

Holding Institution: MCI - Norfolk 2 Clark Street PO Box 43, Norfolk, MA 02056

05/28/2021

The following form was generated:

A Clerk's Notice was generated and sent to:

Defendant: Steven Putnam MCI Norfolk P.O. Box 43, Norfolk, MA 02056

Defendant, Attorney: Merritt Spencer Schnipper, Esq. Schnipper Hennessy

PC 25 Bank Row Suite 2S, Greenfield, MA 01301

Prosecutor, Attorney: Donna Marie Haran, Esq. District Attorney's Office 225

Main St, Worcester, MA 01608

Holding Institution: MCI - Norfolk 2 Clark Street PO Box 43, Norfolk, MA 02056

06/07/2021

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Pro Se Defendant's Objection to CPCS Letter

*Exhibits appended to P#126 (A,B & C) filed in case

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

**WORCESTER SUPERIOR COURT
DOCKET NO. 0485CR00666**

COMMONWEALTH OF MASSACHUSETTS

v.

STEVEN M. PUTNAM

**COMMONWEALTH'S OPPOSITION TO DEFENDANT'S MOTION
FOR POST-CONVICTION FORENSIC ANALYSIS**

The Commonwealth of Massachusetts does hereby oppose the defendant's motion for post-conviction forensic analysis. As grounds therefor, the Commonwealth states that the defendant has not demonstrated by a preponderance of the evidence that the requested analysis has the potential to result in evidence that is material to his identification as the perpetrator of the crime, or that a reasonably effective attorney would have sought the forensic analysis at issue. The defendant has also failed to establish a sufficient chain of custody.

Prior Proceedings

On April 16, 2004, a Worcester County Grand Jury returned indictments charging the defendant with home invasion, G.L. c. 265, § 18C, armed assault in a dwelling, G.L. c. 265, § 18A, aggravated rape, G.L. c. 265, § 22(a), and assault and battery, G.L. c. 265, § 13A. 21. The matter was tried before Fecteau, J., and a jury on February 27, 2006.

On March 1, 2006, the jury convicted the defendant of home invasion, armed assault in a dwelling, rape, and assault and battery. On March 3, 2006, Judge Fecteau sentenced the defendant to concurrent terms of 20 to 25 years in state prison for the defendant's home invasion and armed assault in a dwelling convictions. Judge Fecteau imposed a concurrent 18-20 year

sentence for the rape conviction and sentenced the defendant to five years of probation on and after his state prison sentences for the assault and battery conviction.

The defendant filed a notice of appeal on March 3, 2006. On October 19, 2009, in a published decision, the Appeals Court affirmed the defendant's convictions. *Commonwealth v. Putnam*, 75 Mass. App. Ct. 472 (2009). On September 14, 2011, the defendant filed a *pro-se* motion for a new trial which was denied by Kenton-Walker, J., on November 22, 2011. The defendant filed his notice of appeal from the denial of that motion on December 19, 2011. The Appeals Court affirmed the order denying the defendant's motion for a new trial in an unpublished decision on February 28, 2013. *Commonwealth v. Putnam*, 83 Mass. App. Ct. 1115 (2013).

On February 7, 2014, the defendant filed a *pro-se* motion for post-conviction forensic and scientific testing pursuant to G.L. c. 278A. On February 28, 2014, the defendant filed his second *pro-se* motion for a new trial. On April 24, 2014, Ricciardone, J., denied the defendant's second new trial motion and dismissed the defendant's motion for post-conviction testing. The defendant filed a notice of appeal from the denial of his second motion for a new trial on May 9, 2014. R.26. The Appeals Court affirmed the order denying the defendant's second motion for a new trial in an unpublished decision on March 19, 2015. *Commonwealth v. Putnam*, 87 Mass. App. Ct. 1111 (2015).

On October 2, 2015, the defendant filed his third *pro-se* motion for a new trial which was denied by Frison, J., on December 11, 2015. R.1-16, 26. The defendant filed a notice of appeal from the denial of his third motion for a new trial on December 28, 2015. R.9, 26. This appeal is currently pending before the Appeals Court.

On July 25, 2016, the defendant filed his second *pro-se* motion for post-conviction

forensic and scientific testing pursuant to G.L. c. 278A. On September 6, 2016, the Court (Tucker, J.) found that the defendant's motion was sufficient to proceed under G.L. c. 278A, § 3(e), and granted the Commonwealth sixty days to reply, pursuant to G.L. c. 278A, § 4.

Facts

The Appeals Court recited the following facts in its opinion affirming the defendant's convictions *Commonwealth v. Putnam*, 75 Mass. App. Ct. 472, 473-76, rev. denied, 455 Mass. 1105 (2009):

The victim, a self-employed counseling psychologist, lived on Old Mill Road in Harvard. Old Mill Road is a two-lane road with fields and woods, as well as isolated houses in the surrounding area. The victim's nearest neighbors were Anne Marie Arnold and Hank Emerson, who lived together about one-eighth of one mile down the road, on a working farm. The defendant lived on Arnold's property in an apartment across from the main house. He worked on the farm as a handyman and a helper.

The victim first met the defendant in 2001 at a block party. In 2002, the victim paid the defendant to clean leaves from her roof and her gutters. Around the same time, they had a few brief conversations. The victim occasionally saw the defendant on Arnold's property.

The day after Thanksgiving in 2003, in the early evening, the defendant knocked on the victim's front door and asked to come into her house. He appeared upset and intoxicated. After she allowed him in, the defendant asked the victim for help; he told her that he had been drinking and doing drugs and that he was not taking his medication. The victim told the defendant to stop drinking, to stop doing drugs, and to take his medication. The defendant then rambled on for about one-half hour; the victim thought the defendant was asking for her professional opinion but she did not give him one. The victim tried to bring the conversation to a close; the defendant eventually left. The next day, the victim called Emerson and told him that she was concerned about the defendant, that she thought he was in bad shape and doing drugs, and that he seemed mentally unstable.

On January 18, 2004, Arnold asked the defendant to leave the property because he had not performed any work on the farm for the prior two months. Arnold suspected that the defendant was drinking and doing drugs.

On January 26, 2004, around 8:30 P.M., while the victim was on the telephone, the defendant knocked on her door. The victim opened the door a few inches and saw the defendant. The defendant said that he wanted to come in and

sufficient to establish that it has not deteriorated, been substituted, tampered with, replaced, handled or altered such that the results of the requested analysis would lack any probative value;

(3) that the evidence or biological material has not been subjected to the requested analysis for any of the reasons in clauses (i) to (v), inclusive, of paragraph (5) of subsection (b) of section 3;

(4) that the requested analysis has the potential to result in evidence that is material to the moving party's identification as the perpetrator of the crime in the underlying case;

(5) that the purpose of the motion is not the obstruction of justice or delay; and

(6) that the results of the particular type of analysis being requested have been found to be admissible in courts of the commonwealth.

G.L. c. 278A, § 7(b); *Commonwealth v. Wade*, 475 Mass. 54, 55 N.E.3d 409, 413 (2016).

The defendant, pursuant to G.L. c. 278A, seeks to have ten items, which he asserts were admitted as exhibits at trial, tested for DNA analysis. The defendant claims that the requested testing and analysis will support his claim that the sexual encounter was consensual. D.M.2-3; Def.Aff.pars.4,5. The defendant has not shown by a preponderance of the evidence that the requested analysis has the potential to result in evidence that is material to his identification as the perpetrator of the crime, or that a reasonably effective attorney would have sought the forensic analysis at issue. The defendant has also failed to show by a preponderance of the evidence an adequate chain of custody of the listed items. Finally, the defendant has failed to demonstrate that some of the items are available to be tested or even exist. Therefore, this Court should deny the defendant's motion.

A. Gray Slacks and Tunic

The defendant has failed to establish by a preponderance of the evidence a sufficient chain of custody for the slacks and the tunic. The victim was wearing gray slacks³ and a tunic when she was assaulted by the defendant. These items were sent to the Massachusetts State Crime Lab on January 27, 2004, and were returned to the Harvard Police Department on February 18, 2005. Commonwealth's Exhibit C. The gray slacks were entered into evidence at trial as Exhibit 9 and the tunic (sweater) was entered into evidence as Exhibit 6. These items are currently stored in the Worcester Superior Court Clerk's Office. The defendant has utterly failed to demonstrate that these items have been "subject to a chain of custody that is sufficient to establish that it has not deteriorated, been substituted, tampered with, replaced, handled or altered such that the results of the requested analysis would lack any probative value." G.L. c. 278A, § 7(b)(2); *Commonwealth v. Clark*, 472 Mass. 120, 136 (2015) (case remanded for judge to make factual findings and conclusion of law as to whether knife handle which has been in custody of District Attorney's Office since 1973 would lack any probative value due to deterioration or handling of item). The slacks and tunic have been stored in the clerk's office for over ten years since the trial occurred in February of 2006. The defendant has provided no evidence to establish that the items have not deteriorated or been handled or altered such that the DNA testing would have any probative value. *See Clark*, 472 Mass. at 132 (defendant submitted affidavit from expert who opined that knife handle could potentially have biological material which could be DNA tested).

³ The defendant lists "Wool Pants" as one of the items requesting to be DNA tested and refers to a portion of analyst Dygan's testimony in support of his request. D.M.2; Tr.II:106-10. Reading Dygan's testimony as a whole, it is clear that when she states "gray wool pants" (Tr.II:106), she is referring to the victim's gray slacks/Exhibit 9.

Moreover, the defendant has failed to establish by a preponderance of the evidence that either the slacks or the tunic “has the potential to result in evidence that is material to the moving party’s identification as the perpetrator of the crime in the underlying case.” G.L. c. 278A, § 7(b)(4). At trial, the central issue for the jury to resolve was consent. The victim testified that the defendant, her neighbor, unlawfully entered her residence armed with a knife. When the victim attempted to call another neighbor for help, the defendant grabbed her around her back, shoved her, punched her face, violently knocked the telephone out of her hand, pulled her hair, and repeatedly punched her. She then testified that, after threatening her with the knife, the defendant ripped off her pants and underwear, digitally raped her, and attempted to rape her with his penis. When the defendant attempted to take his shirt off, the victim ran out of the house and down the street half naked in the freezing cold to her neighbor’s house.

The defendant testified at trial that the victim voluntarily let him in to the house, and they talked for a while because the defendant felt suicidal and was drinking again. He claimed he brought the knife with him to give to the victim because he was afraid that he was going to cut his wrists. The defendant testified that he and the victim engaged in consensual sexual activity until the victim told him to stop. He claimed that he immediately stopped and then the victim got up and ran out the door half naked. He stayed in the house for a few minutes and then he went back to his apartment, grabbed some beer, and walked into the woods.

Under either version testified to at trial, identity was not an issue. The central issue for the jury to resolve was consent. To date, the defendant has filed numerous briefs and motions for new trial in which he continuously avers that the entire encounter with the victim was consensual. *Putnam*, 75 Mass. App. Ct. at 476-78 (Appeals Court rejected defendant’s claim that there was insufficient evidence to sustain his home invasion and armed assault in a dwelling

conviction where defendant asserted that entry was consensual); *Commonwealth v. Putnam*, 83 Mass. App. Ct. 1115 (2013) (Appeals Court affirmed order denying defendant's first new trial motion, rejecting defendant's claim that appellate counsel was ineffective for failing to challenge rape conviction on appeal where, according to defendant, the evidence showed it was consensual); *Commonwealth v. Putnam*, 87 Mass. App. Ct. 1111 (2015) (denial of second new trial motion affirmed where Appeals Court rejected defendant's claim of insufficient evidence of rape and defendant's assertion that victim fabricated her testimony). Indeed, the defendant currently has a fourth appeal pending at the Appeals Court in which the defendant is appealing the denial of his third new trial motion. *Commonwealth v. Putnam*, Appeals Court No. 16-P-0489. In this current appeal, the defendant has included in his record appendix an affidavit in which he again avers that the entire encounter with the victim was consensual. Commonwealth Exhibit D. The defendant makes the same claim in his petition for forensic analysis, claiming only that the testing sought will be relevant to the issue of consent.

The defendant has not provided a shred of evidence or argument to suggest that DNA testing of the items at issue would be material to his identification as the perpetrator, or that it would support his assertion that his encounter with the victim was consensual. He also fails to provide any support for the proposition that showing consent is a proper basis for ordering post-conviction forensic analysis. In addition, in regards to the grey slacks, analyst Dygan testified that she tested the slacks for the presence of blood and seminal fluid and the results were negative. Given the strength of the evidence and the uncontested nature of the defendant's identification at trial, and his repeated assertion that his encounter with the victim was consensual, the defendant has not shown by a preponderance of the evidence, and could not

show, that the requested analysis has the potential to result in evidence that is material to his identification as the perpetrator of the crime.

For the same reasons, the defendant has not shown, by a preponderance of the evidence, that a reasonably effective attorney would have sought the forensic analysis at issue. G.L. c. 278A, §§ 3(b)(5)(iv), 7(b)(3). Whether “a reasonable attorney” would have sought the requested testing is an “objective” inquiry. *Commonwealth v. Wade*, 467 Mass. 496, 512 (2013). Given the defense of consent and the defendant’s repeated admission of being in the victim’s home, bringing a knife, and having sexual contact with her, a reasonable attorney would not have sought the requested DNA testing since such testing would have undermined the defense of consent. *See Strickland v. Washington*, 466 U.S. 688, 691 (1984) (“when a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel’s failure to pursue those investigations may not later be challenged as unreasonable”). Again, the defendant presents no evidence and makes no argument to support his request other than to simply assert that a reasonable attorney would have sought the requested analysis. D.M.3. This Court should deny the defendant’s request to have the victim’s grey slacks and tunic DNA tested.

B. Underwear, Slippers and Socks, and Turtleneck

The victim’s underwear, slippers, socks, and turtleneck were collected at the scene and from the victim and were transported to the crime lab on January 27, 2004. Commonwealth’s Exhibit C. These items were returned to the Harvard Police on February 18, 2005. *Id.* At trial, the victim’s underwear was admitted at Exhibit 10, her slippers and socks were admitted as Exhibit 8, and her turtleneck was admitted as Exhibit 7. These items are currently stored in the Worcester Superior Court Clerk’s Office. For the same reasons as argued above, the defendant

has utterly failed to demonstrate that these items have been "subject to a chain of custody that is sufficient to establish that it has not deteriorated, been substituted, tampered with, replaced, handled or altered such that the results of the requested analysis would lack any probative value." G.L. c. 278A, § 7(b)(2).

Moreover, the defendant has completely failed to show by a preponderance of the evidence, and indeed cannot show, that the requested analysis on these items has the potential to result in evidence that is material to his identification as the perpetrator of the crime. The defendant has not provided a shred of evidence or argument to suggest that these items contain any biological material to conduct a DNA test or that forensic testing of the items at issue would cast light upon the identification of the perpetrator. *Contrast Wade*, 467 Mass. at 506-10 (defendant provided sufficient information to demonstrate that requested DNA testing could be material to the question of who committed the aggravated rape where evidence presented at trial established that a third party contributed to seminal fluid found in the victim's vagina and on her clothes, where defendant denied raping or having sexual intercourse with victim, and where the DNA testing could identify a third party and exonerate the defendant); *Clark*, 472 Mass. at 135-36 (defendant established by a preponderance of evidence that the requested DNA analysis on knife handle had the potential to result in evidence that is material to defendant's identity as rapist where defendant provided affidavit of expert opining that testing was possible and where victim testified that she stabbed her rapist in the shoulder with the knife).

Finally, as argued above, the defendant's defense at trial and his continual assertion to this day, was that his encounter with the victim was consensual. The defendant again fails to demonstrate or even argue how the testing of these items would support his assertion that his encounter with the victim was consensual (assuming that a claim of consent is even relevant to

the defendant's request for testing) or that a reasonable attorney would tests these items. This Court should deny the defendant's request to have the victim's underwear, slippers, socks, and turtleneck DNA tested.

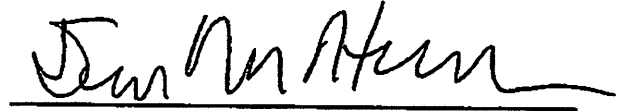
C. Skin cells, Sweatpants, and Unknown Stains

According to the victim's testimony, after the defendant raped her, she ran down the street half naked in the freezing cold to her neighbor's house; they let her in, and gave her a pair of sweatpants to put on. Tr.I:198-200. The crime lab received the sweatpants from Harvard Police on January 27, 2004, and returned them to Harvard Police on February 18, 2005. Commonwealth's Exhibit C. These sweatpants were not entered into evidence at trial. The defendant seeks to have these sweatpants, "skin cells" and "unknown stains" DNA tested. The defendant has utterly failed to establish that the evidence or biological material exists. G.L. c. 278A, § 7(b)(1). For this reason alone, this Court should deny the defendant's request. In addition, the defendant again fails to demonstrate any chain of custody, to explain or show how the testing of these items would be material to identifying the perpetrator or support his assertion that his encounter with the victim was consensual, and to demonstrate that a reasonable attorney would have tested these unknown items. The defendant's motion should be denied.

Conclusion

Based upon the foregoing, this Court should deny the defendant's motion for post-conviction access to forensic analysis.

FOR THE COMMONWEALTH:



DONNA-MARIE HARAN
ASSISTANT DISTRICT ATTORNEY
Courthouse Room G301
225 Main Street
Worcester, Massachusetts 01608

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon Steven Putnam, *Pro-se*, W87245-Box 43, Norfolk, MA 02056 by first class mail, postage prepaid, on October 5, 2016.



Donna-Marie Haran

0485CR00666 Commonwealth vs. Putnam, Steven

Case Type	Indictment	Initiating Action:	HOME INVASION c265 §18C
Case Status	Open	Status Date:	05/23/2014
File Date	04/16/2004	Case Judge:	
DCM Track:	1 - Inventory	Next Event:	

All Information Party Charge Event Docket Disposition

Party Information

Commonwealth - Prosecutor

Alias

Party Attorney

Attorney Haran, Esq., Donna Marie
Bar Code 684526
Address District Attorney's Office
225 Main Street
Worcester, MA 01608
Phone Number (508)755-8601

[More Party Information](#)

Putnam, Steven - Defendant

Alias

Party Attorney

[More Party Information](#)

Harvard PD - Other Interested party

Alias

Party Attorney

[More Party Information](#)

Party Charge Information

Putnam, Steven - Defendant

Charge # 1 : 265/18C/A-0 - Felony HOME INVASION c265 §18C

Original Charge 265/18C/A-0 HOME INVASION c265 §18C (Felony)
Indicted Charge
Amended Charge

Charge Disposition

Disposition Date 03/01/2006
Disposition Guilty

Putnam, Steven - Defendant

Charge # 2 : 265/18A-0 - Felony ASSAULT IN DWELLING, ARMED c265 §18A

Original Charge 265/18A-0 ASSAULT IN DWELLING, ARMED c265 §18A (Felony)
Indicted Charge
Amended Charge

Charge Disposition

Disposition Date 03/01/2006
Disposition Guilty

Putnam, Steven - Defendant

Comm. Exhibit A



The Commonwealth of Massachusetts

SUPREME JUDICIAL COURT

FOR SUFFOLK COUNTY

JOHN ADAMS COURTHOUSE

ONE PEMBERTON SQUARE, SUITE 1300

BOSTON, MASSACHUSETTS 02108-1707

WWW.SJCCOUNTYCLERK.COM

October 29, 2021

Exhibit I

MAURA S. DOYLE
CLERK

CASE INFORMATION (617) 557-1100
FACSIMILE (617) 557-1117
ATTORNEY SERVICES (617) 557-1050
FACSIMILE (617) 557-1055

Steven M. Putnam, Pro Se
MCI-Norfolk
P.O. Box 43
Norfolk, MA 02056

RE: No. SJ-2021-0387

STEVEN M. PUTNAM
v.
NELSON B. ALVES

Worcester Superior Court
No.0485CR00666 (WORCESTER SUPERIOR COURT); 2021-P-0603
(APPEALS COURT)

NOTICE OF DOCKET ENTRY

You are hereby notified that on October 29, 2021, the
following was entered on the docket of the above referenced case:
ORDER: as on file. (Lowy, J.)

/s/ Maura S. Doyle
Maura S. Doyle, Clerk

To: Steven M. Putnam
Worcester Superior Court Dept.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2021-0387

Worcester Superior Court
No.0485CR00666

STEVEN M. PUTNAM

v.

NELSON B. ALVES

ORDER OF TRANSFER

It is ORDERED, pursuant to the provisions of G. L. c. 211, § 4A, that the above-entitled case, concerning Steven M. Putnam's writ of habeas corpus, be transferred to the Superior Court Department of the Trial Court for the County of Worcester for entry and disposition, subject to any filing fee requirements of the said Superior Court.

By the Court, (Lowy, J.)
/s/ Maura S. Doyle
Maura S. Doyle, Clerk

Entered: October 29, 2021

COMMONWEALTH OF MASSACHUSETTS

WORCESTER SS.

SUPERIOR COURT

No. 0485CR00666

Commonwealth v. Putnam,

DEFENDANT'S MOTION FOR THE COURT
TO COMPEL THE COMMONWEALTH TO
CONDUCT FORENSIC TESTING

The defendant, appearing Pro Se, moves this Honorable Court, pursuant to G.L. c. 278A §7(a)(b)(c); §16(a)(b); Mass.R.Crim.P. 30(c)(4), to compel the Commonwealth to conduct forensic testing on the following evidence which is in their custody:

- a. Sexual Assault Kit #22522 (Appendix 28)
- b. Sweater (Appendix 31)
- c. Slacks (Appendix 32)
- d. Shirt (Appendix 32)
- e. Underpants (Appendix 32)
- f. Slippers (Appendix 32)
- g. Sweatpants (Appendix 33)
- h. Jacket (Appendix 33)
- i. Socks (Appendix 33)
- j. Blood Standard [for matching] (Appendix 28)

See: Chain Of Custody Report for Lab Case No. 04-00766, created August 23, 2016.

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Putnam

As grounds therefore, the defendant has completed the sentence he received for the violation of G.L. c. 265 §22. He wishes to clear his name of all convictions because he is actually innocent of all charges, including armed Home Invasion (G.L. c. 265 §18C); Armed Assault In A Dwelling (G.L. c. 265 §18A) and Assault & Battery (G.L. c. 265 §13).

As further grounds [citing] Commonwealth v. Williams, 481 Mass. 799(2019), the Supreme Judicial Court found that actual innocence "satisfies the §3(b)(4)" paragraph in Chapter 278A.

The defendant has presented the name and a description of the requested forensic or scientific analysis. [Appendix 17-24]

The information demonstrating the requested analyses are admissible, based on the evidence delineated in [Appendices 1-10], which is the evidentiary foundation for forensic testing to satisfy the Confrontation Clause of the Sixth Amendment. See, Melendez-Diaz v. Massachusetts, 129 S.Ct. 2527, 2531

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Putnam

(2009)(Evidence to be tested by Lab Technician(s) is "testimonial.")

A description of the evidence appears in [Appendices 28-36], evidence of both parties' clothing, and bodily parts.

According to sworn testimony, the complaining witness claimed the defendant "ripped off my clothing on the bottom of my body," [Appendix 1], as she was wearing "slacks and a tunic and underwear and slippers and socks." [Id.]

The complaining witness testified there was "... a little blood there and there's blood on the right-hand side." [Appendix 3]

Q. And is that the area where the defendant grabbed you?

A. Yes. [Id.]

There was a turtleneck, shoes, slippers and socks, pants (slacks), and finally, underpants. [Appendices 4-6]

Additive 4, p. 5

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Putnam

A Lab technician testified she tested for blood and seminal fluid, which was negative. [Appendix 10] Handler DNA testing was not done, or even requested. [Appendix 11] These items sat around for 12 months. [Appendix 12]

The Lab Technician stated that tests could be conducted years later. [Appendix 13]

Even though closing arguments are not evidence, the jury was told that someone "thought that was blood on the sweater from him." [Appendix 15]

Compare [Appendix 23, ¶10]. Was it wine on the sweater?

Pursuant to G.L. c. 278A §7(a)(1)(2), the evidence exists, [Appendices 25-36], under §7(b)(4), has the potential to show the defendant is innocent of the crimes for which he was charged, that he is not attempting to obstruct justice and that the tested evidence would be admissible in the Worcester Superior Court specifically for this proceeding.

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On August 24, 2004, the defendant moved for Discovery under Mass.R.Crim.P. 14(a)(1)(A) [Amended, March 8, 2002]:

Automatic Discovery - Mandatory Discovery
For the Defendant

The prosecution shall disclose to the defense, and permit the defense to discover, inspect and copy, each of the following items and information at or prior to the pretrial conference, provided it is relevant to the case and is in the possession, custody or control of the prosecutor, persons under the prosecutor's direction and control, or persons who have participated in investigating or evaluating the case and either regularly report to the prosecutor's office or have done so in the case.

[Emphasis added]

Subdivisions (a)(1)(A) and (1)(1)(B) shall have the force and effect of a Court Order. [Emphasis added] (The word "shall" is a mandatory obligation in the Commonwealth. Hashimi v. Kalil, 386 Mass. 607, 609 (1983)

In Warden v. Oregon, 412 U.S. 470, 473-474 (1973) the United States Supreme Court held:

Additive 4, p. 7

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"...the end of justice will best be served by a system of liberal discovery which give both parties the maximum possible amount of information with which to prepare their cases and thereby reduce surprise at trial."

What was a "surprise" to the defense was the complaining witness's statement, "And then he ripped off my clothing." [Appendix 1] The prosecutor showed a picture of the couch to the jury, which was not significant evidence. [Id.]

What would have been significant evidence was the Lab Technician's testimony the clothing was ripped and the actual clothing put forth as evidence. The identification of the defendant as a rapist by producing the so-called ripped/torn clothing would have lent some credibility to the complaining witness's story. see, Commonwealth v. LaCorte, 373 Mass. 700, 704 (1977), otherwise deconstructed on cross-examination. see, Commonwealth v. Rodriguez, 378 Mass. 296, 308 (1979)

Any item of real evidence must be authenticated, or "identified" as the thing or event its proponent represents it to be. LaCorte, 373 Mass. at 704.

Additive 4, p. 8

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Putnam

Then, there is the Tunic, where, "there's a little blood there and there's blood on the right-hand side." [Appendix 3]

The "Chain of Custody" for this tunic is established [Appendix 33] but the identification of blood on it was not. Commonwealth v. Hogg, 365 Mass. 290 (1974); And... Commonwealth v. Herring, 66 Mass. App. Ct. 360 (2006) (Authenticating whether cocaine rocks were same as those seized from the defendant's apartment)

By failing to test these items for identifiable authenticity, the Commonwealth faces dismissal of the charges where the defendant is prejudiced by the omissions. Commonwealth v. Willie, 400 Mass. 427, 432 (1987)

The defendant here has established a reasonable probability, clearly and convincingly, the Commonwealth's actions deprived him of evidence which would have been favorable to his defense at trial. Commonwealth v. Gliniewicz, 398 Mass. 744 (1986); Commonwealth v. Fitzgerald, 402 Mass. 517 (1988) (defendant entitled to new trial in rape case based on newly discovered medical bill proving vasectomy, due diligence demonstrated)

Additive 4, p. 9

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Here, the Chain of Custody Report, produced on August 23, 2016, from the initial date of January 27, 2004 shows the evidence, because of "Handler DNA" evidence was put into cold storage. [Appendix 25] (Appendix 28, for "Blood") [Appendix 32 for slacks, shirt, and underpants];[Appendix 31 for sweater] And... [Appendix 33 for the sweatpants and Tunic].

The trial was held February 28, 2006. The knife, (3½" pocketknife), finger and palm prints, photographs, Sexual Assault Kit, Saliva Sample, Genital Swabs, Head Hairs, Pubic Hair, Sweater, Slacks, Shirt, Underpants, footwear, sweatpants, Tunic and socks from the complaining witness were all returned to the government by February 21, 2006, along with the defendant's boots, and jacket. [Appendix 35]

The Court used Commonwealth v. Mahar, 430 Mass. 643, 652 (2000) for the Armed Assault in a Dwelling charge, piggy-backed onto a Home Invasion, based on the 3½-inch pocketknife. Lesser including offenses notwithstanding, the complaining witness told the physician

Additive 4, p. 10

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at Emerson Hospital, "There was no vaginal or rectal penetration and there was ejaculation." [Exhibit A, p. 5]

In the Patient's Report of Incident, [Exhibit A, p. 9] the complaining witness told the Sexual Assault Nurse Examiner (SANE), Carol Frechette, that the defendant [...attempted to penetrate her vagina but was unable to reach an erection." There was no report by the complaining witness to the SANE that the defendant used his finger to penetrate her. [Id.]

According to the Provider Sexual Crime Report on Acts Described By The Patient/Victim, only an "attempt" was listed, not an actual penetration. [Exhibit A, p. 13]

In the E.M.S. Run Report by Carol Berwind (sic) the EMS attendant reported the patient "stated he did not penetrate her." [Exhibit A, p. 14]

The complaining witness testified under oath, "Well, he lay on top of me and then he put his finger

Additive 4, p. 11

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"in my vagina and then he kept thrusting." [Appendix 7, lines 6-7]

The testimony of the complaining witness should have been challenged by her prior contradictory statements, prior to trial, which would have been admissible on cross-examination, had the clothing been tested for Handler DNA, whether stains in the Tunic were actually blood, and the defendant's blood tested or submitted to DNA analysis for "matching" purposes. Commonwealth v. Evans, 439 Mass. 184, 191-192 (2003)

There would have been no discretion on the admissibility on these tests, as there should be none here. Schwartz v. Goldstein, 400 Mass. 152 (1981) (breach on confidentiality on prior inconsistent medical statement admissible)

This G.L. c. 278A motion, taken as a whole, affords this Court more than just "an indication" the facts presented are different than the testimony at trial. Commonwealth v. West, 312 Mass. 438, 440-441 (1942)

Additive 4, p. 12

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The evidence/testing requested is testimonial in nature. Commonwealth v. Hughes, 380 Mass. 583, 588 (1980), which is evidence that reveals the identification of evidence which will support/contradict the witness's knowledge or thoughts concerning the facts of the case. Commonwealth v. Brennan, 386 Mass. 772, 778 (1982)

The question is this: On the evidence submitted to the State Laboratory for testing, does the lack of testing indicate an adverse legal position for the Commonwealth, i.e., inference-wise? Commonwealth v. Bowden, 379 Mass. 472, 485-486 (1980)

The Commonwealth now has the right to give a reason for the actual failed tests. Commonwealth v. Flanagan, 20 Mass. App. Ct. 472, 476 [n.1,2] (1985)

That the complaining witness may have been embarrassed by the implication that the prosecutor coached her to claim (at Court) penetration by a finger, and contradicted by the Doctor's report, is of no moment here. Commonwealth v. Johnson, 365 Mass. 534, 543-544 (1974)

Additive 4, p. 13

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Putnam

The tests would have led to proper cross-examination, assuming a Constitutional dimension under the Confrontation Clause of the Sixth Amendment, and Article 12 of the Massachusetts Declaration Of Rights. See, Commonwealth v. Grenier, 415 Mass. 680, 686 (1993)(Brady v. Maryland, 373 U.S. 83 (1963) - material must be disclosed to the defendant)

By its very nature, G.L. c. 278A places the burden on the defendant, but the Commonwealth cannot escape its responsibility by failing to conduct the tests, which would have proven the defendant's innocence, at the least would have raised the spectre of reasonable doubt in the minds of the jurors. Whether this was deliberate on the part of the prosecutor or negligence, is a question of law for this Court.. Committee For Public Counsel Services v. Attorney General, 480 Mass. 700, 704 (2018) [citing] Commonwealth v. Tucceri, 412 Mass. 401, 408 (1992) and Brady, ante, at 87.

That the Commonwealth withheld testing is a matter of fact, which, if the evidence had any tendency to

Additive 4, p. 14

278A

-13-

Putnam

exculpate the defendant. There is no choice. CPCS,
480 Mass. at 733.

In Commonwealth v. Wade, 467 Mass. 496 (2014),
the Supreme Judicial Court held that under G.L. c. 278A
§3(d), the defendant must file "an affidavit stating
the moving party is factually innocent of the offense
of conviction..." which the defendant has submitted.
[Exhibit B]

Also, as argued in this pleading, the defendant
shows by clear and convincing evidence, Callahan v.
Westinghouse Broadcasting Co. Inc., 372 Mass. 582, 584
(1977), "the requested forensic or scientific analysis
will support the claim of innocence." Wade, 467 Mass.
at 502.

As in Wade, dismissal of the motion was error as
no "...subsection of G.L. c. 278A §3 imposes upon a
moving party the burden of establishing a reasonable
probability of a more favorable result at trial."
Id., 467 Mass. 507.

Additive 4, p. 15

278A

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Putnam

See Commonwealth v. Putnam, 481 Mass. 1045 (2019)[Appendix 37-40] Also, as in Wade, "... as stated in G.L. c. 278A §3(b)(5)(iv), 'a reasonably effective attorney would have sought the analysis' and the defendant's attorney failed to seek such analysis. Id., Wade, 467 Mass. at 510.

The Commonwealth's Opposition to the defendant's motion, filed October 5, 2016, places all the blame for the lack of testing on the defendant, which is clearly refuted by the Chain of Custody Report. [Appendix 25-36]

Contrary to the Commonwealth's argument, the Chain of Custody Report (printed 8/23/2016, with no evidence it was submitted to the defense prior to trial) is evidence of where the items to be tested are kept, and why they were not tested for "handler DNA", and whether it was really blood on the Tunic. Commonwealth v. Linton, 483 Mass. 227, 229 (2018); Commonwealth v. Moffat, 478 Mass. 292 (2017)

Additive 4, p. 16

278A

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Putnam

The Commonwealth, in its Opposition, forgot to mention G.L. c. 278A §2:

"[T]his chapter shall not be construed to prohibit the performance of forensic or scientific analysis 'under any other circumstances,' including by agreement between the person convicted of a criminal offense and the prosecuting attorney."

[Emphasis added]

The language of the statute is the starting point for all questions of statutory interpretation. Hoffman v. Howmedia Inc., 373 Mass. 32, 37 (1977) And... there is a presumption that the Legislature says in a statute what it means and means in a statute what it says. Connecticut National Bank v. German, 503 U.S. 249 (1992)

Again, the word "shall" means mandatory obligation. Johnson v. District Attorney for Northern District, 342 Mass. 212 (1961)

The factual dispute, based on the two parties' testimony appears on page 10 of the Opposition, including the limitation of "identity" not being

Additive 4, p. 17

278A

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Putnam

an issue. [Id.] The defendant's history of asserting his actual innocence appears on page 2, [citing] Commonwealth v. Putnam, 75 Mass. App. Ct. 472 (2009) [citing] Commonwealth v. Mahar, 430 Mass. 643, 646-647 (2000)(entry was unlawful where the defendant was admitted into the home by a person who was unaware that the defendant entered the home while armed, with the intent to commit an assault upon the person in the dwelling. Putnam 75 Mass. App. Ct. at 477.

In Commonwealth v. Putnam, 83 Mass. App. Ct. 1115 (2013), the Court, Green, Graham & Sullivan, JJ., held:

"[I]t does not matter that some of the [victim's testimony] could be characterized as equivocal or contradictory...'Credibility is a question for the jury to decide,' and they permissibly accredited the victim's testimony." [citing] Commonwealth v. Ruci, 409 Mass. 94, 97 (1991)

However, the jury at the Putnam trial was not allowed to see and hear "all proofs." Commonwealth v. Louraine, 390 Mass. 28, 34-38 (1983), which would refute the Commonwealth argument, "...the requested DNA testing since such testing would have undermined the defense of consent." [Opposition, p. 12]

Additive 4, p. 18

278A

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Putnam

Aside from the "clairvoyant" Commonwealth attorney's supposition, the testing is relevant evidence then and now to prove the truth of the defendant's testimony.

It may be obvious to this Honorable Court that the statutory intent of G.L. c. 278A is to ameliorate injustice in a conviction which would change the outcome of the jury's verdict.

In Melendez-Diaz, ante, the Court held that Due Process required the Commonwealth to notify the defense they had no intention of testing potential exculpatory evidence, readily admitted in the trial. Melendez-Diaz, 129 S.Ct. at 2541.

The Lab Technician testified at trial there was Handler DNA to be tested. [Appendix 8] She tested the pants for blood and seminal fluid, which were negative. [Appendix 10]

On R direct, Attorney Frasso was able to reveal that "even a year later, you would still be able to detect? [Appendix 13]

Additive 4, p. 19

278A

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Putnam

In her closing argument, Paula Frasso stated:

"And there were spots up on the shoulders...she thought that was blood on the sweater from him." [Appendix 15]

As Justice Thomas stated:

"...the documents at issue in this case are quite plainly affidavits...fall within the core class of testimonial statements governed by the Confrontation Clause."

Melendiz-Diaz, 129 S.Ct. at 2543.

The defendant does not claim insufficient evidence or a procedural default, or statements other than his claims of factual innocence because not only has he presented his motion with a preponderance of the evidence, Corsetti v. The Stone Co., 396 Mass. 1, 23-24 (1985), but with clear and convincing evidence. Callahan v. Westinghouse Broadcasting Co. Inc., 372 Mass. 582, 584 (1977)(the probability that the testing, if performed, is exculpatory, is substantially greater than the probability that the testing would prove to be inculpatory) Commonwealth v. Burke, 390 Mass. 480, 483-484 (1983)(Commonwealth has the dual burden

Additive 4, p. 20

278A

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Putnam

of production and persuasion)

The defendant has a Due Process, Constitutional right to have this testing performed. Cote-Whitacre v. Department of Public Health, 446 Mass. 350, 365 [n.15] (2005)(Article 10 may afford greater rights than the due process clause of the 14th Amendment to the U.S. Constitution, this Honorable Court's instant regimen of the due process challenge now adheres to the same standards followed in Federal due process analysis)

"No subject shall be held to answer for any Crimes or offence, until the same is fully and plainly, substantially and formally, described to him; ...And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his council, at his election...."

Article 12, Declaration Of Rights

The Supreme Judicial Court cautioned that:

"Article 12 is one of the great landmarks of human freedom...It is an additional shield to protect the rights declared in Art. 10....The words 'law of the land' in Article 12, which were taken from the

Additive 4, p. 21

278A

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Putnam


"Magna Carta, embrace all that is
comprehended in the words 'due process
of law' in the Fourteenth Amendment."

Publiese v. Commonwealth, 335 Mass. 471 (1957)

WHEREFORE, for the reasons stated above, in fact
and law, the defendant's motion should be granted, or,
in the alternative, if the testing cannot be provided,
the defendant's convictions must be vacated.

April 21, 2021

Respectfully submitted,



Steven M. Putnam, Pro Se
Box 43,
Norfolk, MA 02056

Certificate of Service:

I hereby certify that I mailed a true copy of the above
motion with Exhibits and Appendices, to Donna Marie
Haran, ADA, 225 Main Street, Worcester, MA 01608 on
April 21, 2021.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

WORCESTER SUPERIOR COURT
DOCKET NO. 0485CR00666

COMMONWEALTH OF MASSACHUSETTS

v.

STEVEN M. PUTNAM

COMMONWEALTH'S MOTION TO RESPOND TO DEFENDANT'S MOTION FOR
COURT TO COMPEL THE COMMONWEALTH TO CONDUCT FORENSIC TESTING
AFTER COUNSEL HAS BEEN APPOINTED, AND HAS FILED AN AMENDED OR
SUPPLEMENTAL MOTION OR DECLINED TO DO SO

The Commonwealth does hereby move that it be permitted to respond to the defendant's motion to compel the Commonwealth to conduct forensic testing after counsel has been appointed, and has filed an amended or supplemental motion or declined to do so. As grounds therefor, the Commonwealth states the following:

- (1) On March 1, 2006, the defendant was convicted of home invasion, armed assault in a dwelling, rape, and assault and battery. The defendant was sentenced to concurrent terms of 20 to 25 years in state prison for his home invasion and armed assault in a dwelling convictions, to a concurrent 18-20 year sentence for his rape conviction and to five years of probation on and after his state prison sentences for his assault and battery conviction.
- (2) On October 19, 2009, in a published decision, the Appeals Court affirmed the defendant's convictions. *Commonwealth v. Putnam*, 75 Mass. App. Ct. 472 (2009).
- (3) On July 25, 2016, the defendant filed his second *pro-se* motion for post-conviction forensic and scientific testing pursuant to G.L. c. 278A. On July 7, 2017, after several court

Additive 5, p. 3

dates and CPCS refusal to assign counsel, Tucker. J. ordered CPCS to provide counsel to the defendant, and Attorney Merritt Schnipper was assigned.

(4) On May 29, 2014, Kenton-Walker, J., denied the defendant's motion for forensic or scientific testing, concluding that the defendant did not meet his burden to show that the result would be material to the question of the identity of the perpetrator. On June 4, 2018, the defendant filed a notice of appeal from the order denying his motion for post-conviction forensic testing.

(5) On April 9, 2019, the Supreme Judicial Court reversed Judge Kenton-Walker's order, concluding that the defendant met his threshold burden under G.L. c. 278A, § 3(b)(4) and remanded the case back to Superior Court for a hearing under G.L. c. 278A, § 7(b)(4) where the defendant would have to establish by a preponderance of the evidence that the testing "has the potential to result in evidence that is material to proving that no crime occurred." *Commonwealth v. Putnam*, 481 Mass. 1045, 1046-1047 (2019).

(6) On March 29, 2021, the defendant filed a pro-se motion to revise and revoke sentence. On March 31, 2021, Wrenn, J. denied the defendant's pro-se motion to revise and revoke sentence as being untimely but directed that CPCS screen the matter for an appointment of counsel to follow up based on the ruling in *Commonwealth v. Putnam*, 481 Mass. 1045 (2019).

(7) On April 16, 2021, the defendant filed a motion for reconsideration. On April 26, 2021, Reardon, J. denied the defendant's motion for reconsideration but reiterated that the previous order for CPCS screening for appointment of counsel on the defendant's G.L. c. 278A issues remained in effect.

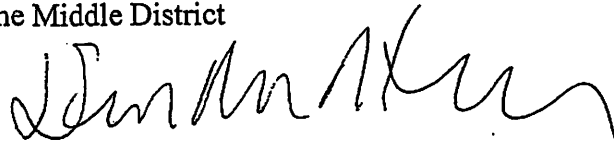
(8) On April 26, 2021, the defendant filed a pro-se motion to compel the Commonwealth to conduct forensic testing. On May 3, 2021, the Commonwealth was given 30 days to respond.

Additive 5, p. 4

(8) If the Commonwealth responds to the defendant's *pro se* motion, and appointed counsel chooses to file a supplemental or amended motion in this matter, the Commonwealth will likely be required to file a second response to any supplemental or amended motion.

Wherefor, the Commonwealth does hereby move that it be permitted to respond to the defendant's motion to compel the Commonwealth to conduct forensic testing after counsel has been appointed, and has filed an amended or supplemental motion, or declined to do so.

Respectfully submitted,
for the Commonwealth
JOSEPH D. EARLY, JR.
District Attorney for
the Middle District

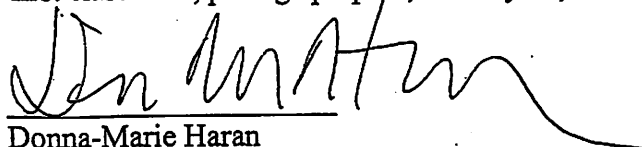


DONNA-MARIE HARAN
Assistant District Attorney
BBO # 664526
Worcester Trial Court
District Attorney's Office
225 Main Street, Room G301
Worcester, MA 01608
(508)757-2786

Dated: May 26, 2021

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon Steven Putnam, *Pro-se*, P.O Box 43, Norfolk, MA 02056, by first class mail, postage prepaid, on May 26, 2021.


Donna-Marie Haran

Additive 7, p. 1 Exhibit L

Dennis P. McManus
Clerk of the Courts
Worcester Superior Court
225 Main Street
Worcester, MA 01608

Steven M. Putnam
W87245 - Box 43,
Norfolk, MA 02056

June 3, 2021

RE: Com., v. Putnam,

No. 0485CR00666

Dear Mr. McManus:

Enclosed please find for filing:

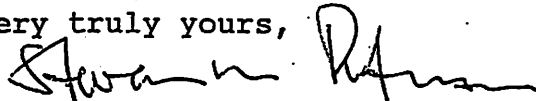
DEFENDANT'S REBUTTAL TO THE COMMONWEALTH'S MOTION...
OF MAY 26, 2021

EXHIBITS A - C

Please docket in your usual manner.

Thank you for your kind assistance.

Very truly yours,



Steven M. Putnam, Pro Se

Additive 7, p. 2

COMMONWEALTH OF MASSACHUSETTS

WORCESTER SS.

SUPERIOR COURT

No. 0485CR00666

Commonwealth v. Putnam,

DEFENDANT'S REBUTTAL TO THE
COMMONWEALTH'S MOTION...
OF MAY 26, 2021

As of May 1, 2020, the CPCS Director Elizabeth Dembitzer informed the defendant "...we will not be assigning a new attorney to screen your case." (Ex. A]

On January 14, 2020, defendant's attorney (at that time) wrote to him about the funding, which was unresolved. [Ex. B]

On May 13, 2020, Mr. Schnipper of Schnipper Hennessey wrote to Ms. Dembitzer of CPCS on the issue of laboratory testing. [Ex. C]

The Assistant District Attorney now wishes to delay these forensic proceedings, "...after counsel has been appointed, and has filed an amended or supplemental motion, or declined to do so." [Commonwealth's Motion, p. 3, May 26, 2021

This would be prejudicial to the defendant.

Additive 7, p. 3

Rebuttal

-2-

Putnam

The defendant's Benefactor is now willing to pay for the testing, upon the itemized breakdown of the testing costs, delinating each item to be tested.

There is no sound reason to accede to the Commonwealth's Motion other than in the Commonwealth's wish.

The Commonwealth did not oppose the legal arguments made for the [Motion To Compel] the testing to be done, made on April 21, 2021, with a comprehensive pleading, including Exhibits and Appendices.

The Supreme Judicial Court was clear when it stated the defendant must demonstrate the requested analysis has the potential to result in evidence that is material where "no crime occurred..." Commonwealth v. Putnam, 481 Mass. 1045 (2019)

Any further delays, where the defendant agrees to pay for the testing upon receipt of an itemized cost analysis, would continue to deny justice to the defendant.

WHEREFORE, this Honorable Court must compel the Commonwealth of Massachusetts' Crime Laboratory to send

Additive 7, p. 4

Rebuttal


-3-

Putnam

a proposed itemized list of objects to be tested,
for which the defendant will agree to pay. Then, if
counsel is necessary, the Court can go from that point.

June 3, 2021

Respectfully submitted,


Steven M. Putnam, Pro Se
Box 43,
Norfolk, MA 02056

Certificate of Service:

I hereby certify that I mailed a true copy of the above
Rebuttal to Donna Marie Haran, ADA, 225 Main Street G301
Worcester, MA 01608 on June 3, 2021.

Exhibit M

Francis V. Kenneally
Clerk of the Court
Supreme Judicial Court
1 Pemberton Sq. 1400
Boston, MA 02108-1724

Steven M. Putnam
Box 43,
Norfolk, MA 02056

November 8, 2021

RE: Putnam v. Alves,

No. SJC-2021-----

Dear Mr. Kenneally:


Enclosed please find for filing:

PETITIONER'S VERIFIED MOTION FOR RECONSIDERATION TO
THE FULL BENCH, JUSTICES BUDD, GAZIANO, CYPHER, KAFKER,
WENDLANDT, & GEORGES, JR.

Please docket in your usual manner.

Thank you for your kind assistance.

Very truly yours,


Steven M. Putnam, Pro Se

COMMONWEALTH OF MASSACHUSETTS

WORCESTER SS.

SUPREME JUDICIAL COURT

No. SJC-2021-----

Steven M. Putnam, Petitioner

-v-

Nelson B. Alves, Respondent

PETITIONER'S VERIFIED MOTION FOR
RECONSIDERATION TO THE FULL BENCH,
JUSTICES BUDD, GAZIANO, CYPHER,
KAFKER, WENDLANDT, & GEORGES, JR.

On his journey to the Federal District Court,
pursuant to 28 U.S.C. §2241, the petitioner respect-
fully filed a Petition For A Writ Of Habeas Corpus
under G.L. c. 248 §1. [Petition, p. 1]

The petitioner filed the petition in the Supreme
Judicial Court, the "state's highest Court," in order
to exhaust State remedies. Picard v. Connor, 404 U.S.
270, 272 (1971)(State prisoner must present the sub-
stance of his claim to the highest State Court to give
it a fair opportunity to apply controlling legal prin-
ciples to the facts bearing on the petitioner's con-
stitutional claim)

Recon

-2-

Putnam

The petitioner cited G.L. c. 248 §1:

"Whoever is imprisoned or restrained of his liberty may, as of right and of course, prosecute a writ of habeas corpus, according to this chapter, to obtain release from such imprisonment or restraint if it proves to be unlawful,...."

The corollary to the State statute is 28 U.S.C.

§2241(c)(3):

"Federal Courts may entertain an application for a writ of habeas corpus only on the ground that the prisoner's confinement violates the Constitution, Laws, or Treaties of the United States."

The petitioner filed the State petition because after the State's highest Court remanded his G.L. c. 278A application under Commonwealth v. Putnam, 481 Mass. 1045 (2019) to the Worcester Superior Court, that Court abused its discretion by not applying the facts to established law. L.L. v. Commonwealth, 470 Mass. 169, 185 [n.27] (2014) and that the State's prosecutor had committed misconduct in the case.

The petitioner pointed out to the State's highest Court that the violations were Structural Defects, not

Recon

-3-

Putnam

subject to harmless error analysis, and that the petitioner was not challenging his conviction. These violations were contrary to the 5th, 6th, and 14th Amendments to the United States Constitution and Article XII of the Massachusetts Declaration Of Rights. [Petition, p. 3]

The petitioner filed the petition on October 14, 2021 to the State's highest Court, the Supreme Judicial Court, delineating the violations of Federal law, that he should be relieved of any further incarceration. [Petition, pp. 13-14]

For reference(s) see Petition For A Writ Of Habeas Corpus, Appendices 1-10 - Additives 4, 5, 7, et. seq.

Facts of the Case

For background only, see Commonwealth v. Putnam, 75 Mass. App. Ct. 472, 473-476 (2009) while noting the petitioner has completed the sentence for the [alleged] Rape conviction.

Recon

-4-

Putnam

Argument

The petitioner, if the full bench does not correct Justice Lowy's abuse of discretion, will file a 28 USC §2241 petition in the District Court of Massachusetts. Pischke v. Litscher, 178 F.3d 497, 499 (7th Cir. 1999) (petition proper when filed in the district where the petitioner is confined)

On October 29, the State's highest Court docketed the petitioner in the State's second highest Court, the Single Justice, Lowy, J., "For Suffolk County." [See, Appendix 9, p. 1] which that Court included an "Order Of Transfer" to Worcester Superior Court, apparently to abuse the petitioner some more. [Id., p. 2]

The petitioner is "in custody" at the Norfolk Colony Prison. 28 USC §2241(c)(3); Spencer v. Kemna, 523 U.S. 1, 7 (1998) ("in custody" requirement satisfied as long as pēīīīōñēr is incarcerated when petition is filed); Leitao v. Reno, 311 F.3d 453, 455 (1st Cir. 2002)

Despite not challenging his conviction for Rape because that sentence is already completed from 2004,

Recon

-5-

Putnam

the petitioner is confined under a different conviction, Home Invasion, which he does not challenge either, but is in custody. Carafas v. LaValle, 391 U.S. 234 (1968)

Because the petitioner challenges his confinement under the "abuse of discretion" by the Court violation and the Prosecutorial Misconduct Doctrine, his remedy, based on his actual innocence is habeas corpus. See, Herrera v. Collins, 506 U.S. 390, 400 (1993)(independent constitutional violation by the State allows cognizable claim of innocence)

As delineated in petitioner's State Petition For A Writ Of Habeas Corpus, the Worcester Superior Court and the Single Justice's decisions, not on the merits of the claim, Slack v. McDaniel, 529 U.S. 473, 484-485 (2000), were contrary to, or involved an unreasonable application of, clearly established Federal Law, as determined by the Supreme Court, or based on an unreasonable determination of the facts.

Recon

-6-

Putnam

The petitioner, in the Petition For A Writ Of Habeas Corpus, cited specific Federal constitutional and statutory provisions in the exhaustion to the State's highest Court. [Petition, pp. 3-13] The State's highest Court has not addressed the claim in a written opinion, Dye v. Hofbauer, 546 U.S. 1, 3 (2005)(failure of the State's highest Court to mention the Federal claims does not mean the claim was not presented to it)

The Assistant District Attorney ("The Commonwealth") Donna-Marie Haran was served a copy of the Petition. Her arrogance, as a friend of the Court, excused her from filing a response to the Petition.

There were no "invalid prudential" or "procedural reasons" given to the petitioner for the refusal by Justice Lowy to apply the Full Faith & Credit Statute, 28 U.S.C. §1738, Matsushita elec. Indus. Co. v. Epstein, 516 U.S. 367, 369 (1996), on the Federal law and the Supreme Court law presented by the petitioner.

In Commonwealth v. Putnam, 481 Mass. 1045 (2019)

Recon

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Putnam

[Appendix One, pp. 1-4] the State's last reasoned decision was 1) the defendant's motion satisfied the G.L. c. 278A §3(b)(4) threshold burden for forensic testing, and 2) that there was no comment on the defendant's "likelihood of success." [Id., p. 3]

The Supreme Judicial Court ordered:

"more specifically, here the defendant will need to demonstrate that the analysis has the potential to result in evidence that is material to proving that no crime occurred." [Appendix One, p. 4]

In Ylst v. Nunnemaker, 501 U.S. 797, 801 (1991) it was held that where the State's highest Court, as in Putnam, 481 Mass. 1045 (2019), reached the merits of the claim, the Federal Courts may consider the claims. The opinion Putnam is not ambiguous, or dismissed on procedural grounds.

There can be no "presumption of correctness" when the Supreme Judicial Court ignored the G.L. c. 248 §1 claim, relegated it to a Single Justice of the

Recon

-8-

Putnam

County Court, who then ignored the Federal claims and transferred it to the very Court which had abused its discretion every step of the way since the Putnam decision.

In the petition, the petitioner presented questions of Federal law and mixed questions of law and fact to the State's highest Court. Miller v. Fenton, 474 U.S. 104, 114 (1985); Levasseur v. Pepe, 70 F.3d 187, 191 (1st Cir. 1995)(presumption of correctness not accorded to State Court's consideration of certain claims of the petitioner and waiver of procedural default because of legal question)

Failing to provide the discovery of the State Laboratory's testing of the tunic (sweater) when they received it for testing in January 2004, after the complaining witness testified at trial there was blood on the tunic, is a Constitutional violation under Brady v. Maryland, a structural defect which requires the release of the prisoner.

If the reasonable factfinder found out there was

Recon

-9-

Putnam

no blood on the tunic (sweater), that the witness had lied under oath, this is clear and convincing evidence of reasonable doubt which may have led to acquittal. Lopez v. Massachusetts, 480 F.3d 591, 594 (1st Cir. 2007)(defendant's Brady reviewed under deferential §2254(d) standards of mixed questions of law and fact subject to review)

This Court knows an evidentiary hearing should have taken place already in the Worcester Superior Court, because the petitioner has developed facts which would foster more relevant facts at such a hearing. Williams, v. Taylor, 529 U.S. 420, 437 (2000); Pike v. Guarino, 492 F.3d 61, 69 (1st Cir. 2007)(petitioner entitled to evidentiary hearing because he presented extensive evidence in State Court)

Conclusion

For the reasons stated above, in fact and law, the Full bench must review the Single Justice Lowy's preferential reward to the Commonwealth for no stated reason.

Recon

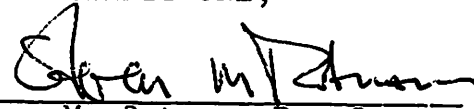
-10-

Putnam

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS
EIGHTH DAY OF NOVEMBER, TWO THOUSAND TWENTY ONE,

November 8, 2021

/s/



Steven M. Putnam, Pro Se
Box 43,
Norfolk, MA 02056

Certificate of Service:

I hereby certify that I mailed a true copy of the above
Verified Motion For Reconsideration to Donna-Marie Haran,
ADA, 225 Main Street, Worcester, MA 01608 on 11/8/2021.

Exhibit N

The Commonwealth of Massachusetts
SUPREME JUDICIAL COURT
CLERK'S OFFICE FOR THE COMMONWEALTH
JOHN ADAMS COURTHOUSE
ONE PEMBERTON SQUARE, SUITE 1400
BOSTON, MASSACHUSETTS 02108

FRANCIS V. KENNEALLY, CLERK
(617) 557-1188

December 9, 2021

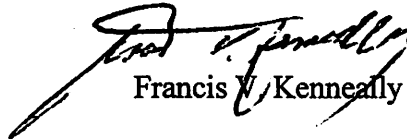
Steven M. Putnam
PO Box 43
Norfolk, MA 02056

RE: Letter received on December 6, 2021

Dear Mr. Putnam:

Thank you for your recent letter wherein you contend that this clerk's office "did not assign a docket number" for your motion for reconsideration. This office did not receive your motion for reconsideration. I assume that you sent it to the appropriate place, which would be the Supreme Judicial Court for Suffolk County. This office would not have been the appropriate place for your motion for reconsideration because your case was not decided by the full court. Rather, your case was decided by a single justice. The clerk's office for the full court would assign a new docket number after a petitioner files a notice of appeal with the Supreme Judicial Court for Suffolk County, which then sends the assembled record to this office. Because no notice of appeal was filed there, this office did not receive the assembled record in SJ-2021-0387.

Very truly yours,


Francis V. Kenneally

FVK/

Exhibit O

Mr. Francis V. Kenneally
Clerk of the Court
Supreme Judicial Court
1 Pemberton Sq. 1400
Boston, MA 02108-1724

Steven M. Putnam
Box 43,
Norfolk, MA 02056

December 20, 2021

RE: Verified Motion For Reconsideration
To The Full Bench, Justices Budd,
Gaziano, Cypher, Kafker, Wendlandt,
and Georges, Jr.

Dear Clerk Kenneally:

I received your letter of December 9, 2021 on
December 18, 2021.

You claimed your office did not receive the
above motion, which was filed in the Supreme Judicial
Court on November 8, 2021. A reasonable person could
conclude that because you received the December 2,
2021 letter requesting a Docket Number, mailed with
the same address as the Verified Motion, that there
may be something wrong with the mail.

What I was asking the Supreme Judicial Court was
to reconsider assigning the case to the Single Justice
in the first instance, who then transferred it to
the very Court which had abused its discretion in
all its previous adjudications, and denial all relief,
it was an exercise in futility to transfer the case.

Kenneally

-2-

Putnam

This is especially true where I told the Supreme Judicial Court that I was exhausting my State remedies prior to filing in the Federal District Court, because the State had already exhibited misconduct, both in the Courts and by the Commonwealth's attorneys.

Please give the Verified Motion For Reconsideration To the Full Bench to the full bench for its lubrication. The Court should pay particular attention to the violations of the United States... Supreme Court decisions and relevant Federal law.

Very truly yours,

Steven M. Putnam, Pro Se

C O P Y

C O P Y

C O P Y